# Montana Code Annotated
# 2025

Civil Liability, Remedies & Limitations
Contracts & Other Obligations
Trade & Commerce

VOLUME 5

# MONTANA CODE ANNOTATED
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Periodic payment of damages — medical malpractice damage limitations, Title 25, ch. 9, part 4.

Placement of warning sign in water legally accessible to public — liability limitation — role of Department, 87-1-287.

**27-1-101. Judicial remedies defined.** Judicial remedies are such as are administered by the courts of justice or by judicial officers empowered for the purpose by the constitution and statutes of this state.

**History: En. Sec. 3469, C. Civ. Proc. 1895; re-en. Sec. 8077, Rev. C. 1907; re-en. Sec. 8995, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 20; re-en. Sec. 8995, R.C.M. 1935; R.C.M. 1947, 93-2201.**

**Cross-References**

Remedy for every wrong, 1-3-214.

**27-1-102. Actions and special proceedings defined.** (1) These remedies are divided into two classes:

(a) actions; and

(b) special proceedings.

(2) An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Every other remedy is a special proceeding.

**History: (1)En. Sec. 3470, C. Civ. Proc. 1895; re-en. Sec. 8078, Rev. C. 1907; re-en. Sec. 8996, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 21; re-en. Sec. 8996, R.C.M. 1935; Sec. 93-2202, R.C.M. 1947; (2)Ap. p. Sec. 3471, C. Civ. Proc. 1895; re-en. Sec. 8079, Rev. C. 1907; re-en. Sec. 8997, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 22; re-en. Sec. 8997, R.C.M. 1935; Sec. 93-2203, R.C.M. 1947; Ap. p. Sec. 3472, C. Civ. Proc. 1895; re-en. Sec. 8080, Rev. C. 1907; re-en. Sec. 8998, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 23; re-en. Sec. 8998, R.C.M. 1935; Sec. 92-2204, R.C.M. 1947; R.C.M. 1947, 92-2202, 93-2203, 93-2204.**

**27-1-103. Civil and criminal actions.** (1) Actions are of two kinds:

(a) civil; and

(b) criminal.

(2) A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong. Titles 45 and 46 define and provide for the prosecution of a criminal action. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

**History: (1)En. Sec. 3473, C. Civ. Proc. 1895; re-en. Sec. 8081, Rev. C. 1907; re-en. Sec. 8999, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 24; re-en. Sec. 8999, R.C.M. 1935; Sec. 92-2205, R.C.M. 1947; (2)Ap. p. Sec. 3479, C. Civ. Proc. 1895; re-en. Sec. 8087, Rev. C. 1907; re-en. Sec. 9005, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 30; re-en. Sec. 9005, R.C.M. 1935; Sec. 93-2211, R.C.M. 1947; Ap. p. Sec. 3480, C. Civ. Proc. 1895; re-en. Sec. 8088, Rev. C. 1907; re-en. Sec. 9006, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 31; re-en. Sec. 9006, R.C.M. 1935; Sec. 93-2212, R.C.M. 1947, 93-2212; Ap. p. Sec. 3481, C. Civ. Proc. 1895; re-en. Sec. 8089, Rev. C. 1907; re-en. Sec. 9007, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 32; re-en. Sec. 9007, R.C.M. 1935; Sec. 93-2213, R.C.M. 1947; R.C.M. 1947, 93-2205, 93-2211, 93-2212, 93-2213.**

**Cross-References**

One form of civil action, 25-1-101.
Effect of Criminal Code — no limitation on civil remedy, 45-1-104.

**27-1-104. Bases for civil actions.** A civil action arises out of:

(1) an obligation;

(2) an injury.

**History: En. Sec. 3474, C. Civ. Proc. 1895; re-en. Sec. 8082, Rev. C. 1907; re-en. Sec. 9000, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 25; re-en. Sec. 9000, R.C.M. 1935; R.C.M. 1947, 93-2206.**

**Cross-References**

One form of civil action, 25-1-101.
Obligations in general, Title 28, ch. 1.

**27-1-105. Obligation defined.** An obligation is a legal duty by which one person is bound to do or not to do a certain thing and arises from:

(1) contract; or

(2) operation of law.

**History: En. Sec. 3475, C. Civ. Proc. 1895; re-en. Sec. 8083, Rev. C. 1907; re-en. Sec. 9001, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 26; re-en. Sec. 9001, R.C.M. 1935; R.C.M. 1947, 93-2207.**

**Cross-References**

How obligation arises, 28-1-102.

**27-1-106. Injury defined.** (1) An injury is of two kinds:

(a) to the person; and

(b) to property.

(2) An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Every other injury is an injury to the person.

**History: (1)En. Sec. 3476, C. Civ. Proc. 1895; re-en. Sec. 8084, Rev. C. 1907; re-en. Sec. 9002, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 27; re-en. Sec. 9002, R.C.M. 1935; Sec. 93-2208, R.C.M. 1947; (2)Ap. p. Sec. 3477, C. Civ. Proc. 1895; re-en. Sec. 8085, Rev. C. 1907; re-en. Sec. 9003, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 28; re-en. Sec. 9003, R.C.M. 1935; Sec. 93-2209, R.C.M. 1947; Ap. p. Sec. 3478, C. Civ. Proc. 1895; re-en. Sec. 8086, Rev. C. 1907; re-en. Sec. 9004, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 29; re-en. Sec. 9004, R.C.M. 1935; Sec. 93-2210, R.C.M. 1947; R.C.M. 1947, 93-2208, 93-2209, 93-2210.**

**27-1-107. Kinds of relief — when given.** As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance. Specific and preventive relief may be given only in those cases specified by statute.

**History: En. Sec. 4260, Civ. C. 1895; re-en. Sec. 6038, Rev. C. 1907; re-en. Sec. 8657, R.C.M. 1921; Cal. Civ. C. Sec. 3274; re-en. Sec. 8657, R.C.M. 1935; R.C.M. 1947, 17-101; amd. Sec. 1, Ch. 12, L. 1979.**

**Cross-References**

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## Part 2
## Damages

**Part Cross-References**

Periodic payment of certain future damages, Title 25, ch. 9, part 4.
Limitation on liability for compliance with income withholding order, 40-5-424.
Restoration damages, 75-10-729.

**27-1-201. Detriment defined.** Detriment is a loss or harm suffered in person or property.

**History:** **En. Sec. 4271, Civ. C. 1895; re-en. Sec. 6041, Rev. C. 1907; re-en. Sec. 8660, R.C.M. 1921; Cal. Civ. C. Sec. 3282; Field Civ. C. Sec. 1833; re-en. Sec. 8660, R.C.M. 1935; R.C.M. 1947, 17-202.**

**27-1-202. Right to compensatory damages.** Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation for it in money, which is called damages. The measure of the damages recoverable from the person in fault for the reasonable value of medical services or treatment in actions arising from bodily injury or death is set forth in 27-1-308.

**History:** **En. Sec. 4270, Civ. C. 1895; re-en. Sec. 6040, Rev. C. 1907; re-en. Sec. 8659, R.C.M. 1921; Cal. Civ. C. Sec. 3281; Field Civ. C. Sec. 1832; re-en. Sec. 8659, R.C.M. 1935; R.C.M. 1947, 17-201; amd. Sec. 1, Ch. 327, L. 2021.**

**Cross-References**

Administration of justice, Art. II, sec. 16, Mont. Const.

Liability exposure of governmental entities, Title 2, ch. 9, part 1.

**27-1-203. Right to damages for detriment resulting after suit brought and for future detriment.** Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result in the future.

**History:** **En. Sec. 4272, Civ. C. 1895; re-en. Sec. 6042, Rev. C. 1907; re-en. Sec. 8661, R.C.M. 1921; Cal. Civ. C. Sec. 3283; Field Civ. C. Sec. 1834; re-en. Sec. 8661, R.C.M. 1935; R.C.M. 1947, 17-203.**

**Cross-References**

Request for periodic payment of future damages — nonmalpractice claims, 25-9-403.

**27-1-204. Nominal damages when no appreciable detriment.** When a breach of duty has caused no appreciable detriment to the party affected, the party may recover nominal damages.

**History:** **En. Sec. 4367, Civ. C. 1895; re-en. Sec. 6088, Rev. C. 1907; re-en. Sec. 8706, R.C.M. 1921; Cal. Civ. C. Sec. 3360; Field Civ. C. Sec. 1879; re-en. Sec. 8706, R.C.M. 1935; R.C.M. 1947, 17-608; amd. Sec. 559, Ch. 56, L. 2009.**

**27-1-205 through 27-1-209 reserved.**

**27-1-210. Interest on torts.** (1) (a) Subject to subsection (2), in an action for recovery on an injury as defined in 27-1-106, a prevailing claimant is entitled to interest at a rate equal to the prime rate published by the federal reserve system in its statistical release H.15 Selected Interest Rates or in any publication that may supersede it on the day judgment is entered, plus 3%, on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or the party's agent stating the claim and how the specific sum was calculated.

(b) The rate for bank prime loans established in subsection (1)(a) must be set as of January 1 of each year and remain in effect until December 31 of each year.

(2) The interest provisions of subsection (1) do not apply to damages not capable of being made certain by calculation, including but not limited to future damages until the damages are incurred and damages for:

(a) pain and suffering;
(b) injury to credit, reputation, or financial standing;
(c) mental anguish or suffering;
(d) exemplary or punitive damages;
(e) loss of established way of life;
(f) loss of consortium; and
(g) attorney fees.

(3) The jury is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on any judgment rendered.

(4) Any payment by a party of a claim or interest on a claim as set forth in subsection (1) is not an admission of liability and may not be made known to the jury.

**History:** **En. Sec. 1, Ch. 523, L. 1985; amd. Sec. 560, Ch. 56, L. 2009; amd. Sec. 2, Ch. 446, L. 2017.**

**Cross-References**

Execution to include interest, 25-13-304.

**27-1-211. Right to interest.** Each person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover that is vested in the person upon a particular day is entitled also to recover interest on the damages from that day except during the time that the debtor is prevented by law or by the act of the creditor from paying the debt.

**History: En. Sec. 4280, Civ. C. 1895; re-en. Sec. 6043, Rev. C. 1907; re-en. Sec. 8662, R.C.M. 1921; Cal. Civ. C. Sec. 3287; Field Civ. C. Sec. 1835; re-en. Sec. 8662, R.C.M. 1935; R.C.M. 1947, 17-204; amd. Sec. 561, Ch. 56, L. 2009.**

**27-1-212. When award of interest discretionary.** In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 2, chapter 9, parts 1 through 3, as amended.

**History: En. Sec. 4281, Civ. C. 1895; re-en. Sec. 6044, Rev. C. 1907; re-en. Sec. 8663, R.C.M. 1921; Cal. Civ. C. Sec. 3288; Field Civ. C. Sec. 1836; re-en. Sec. 8663, R.C.M. 1935; amd. Sec. 3, Ch. 234, L. 1977; R.C.M. 1947, 17-205.**

**27-1-213. Validity of interest rate set by contract.** Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

**History: En. Sec. 4282, Civ. C. 1895; re-en. Sec. 6045, Rev. C. 1907; re-en. Sec. 8664, R.C.M. 1921; Cal. Civ. C. Sec. 3289; Field Civ. C. Sec. 1837; re-en. Sec. 8664, R.C.M. 1935; R.C.M. 1947, 17-206.**

**Cross-References**

Interest rates allowed by agreement, 31-1-107.

**27-1-214. Waiver of interest by accepting principal.** Accepting payment of the whole principal, as such, waives all claim to interest.

**History: En. Sec. 4283, Civ. C. 1895; re-en. Sec. 6046, Rev. C. 1907; re-en. Sec. 8665, R.C.M. 1921; Cal. Civ. C. Sec. 3290; Field Civ. C. Sec. 1838; re-en. Sec. 8665, R.C.M. 1935; R.C.M. 1947, 17-207.**

**27-1-215 through 27-1-219 reserved.**

**27-1-220. Punitive damages — when allowed — limitation.** (1) Except as otherwise expressly provided by statute and subject to subsection (3), a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) An award for punitive damages may not exceed $10 million or 3% of a defendant's net worth, whichever is less. This subsection does not limit punitive damages that may be awarded in class action lawsuits.

**History: En. Sec. 1, Ch. 507, L. 1985; amd. Sec. 1, Ch. 627, L. 1987; amd. Sec. 1, Ch. 457, L. 2003.**

**Cross-References**

State or other governmental entity immune from exemplary and punitive damages, 2-9-105.

Insurance coverage of punitive damages, 33-15-317.

**27-1-221. Punitive damages — liability — proof — award.** (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely on the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) A request for an award of punitive damages may not be contained within an initial pleading filed by a party with the court. At any time after the initial pleading is filed and discovery has commenced in the lawsuit, a party may move the court to allow the party to amend the pleading to assert a claim for punitive damages. The party making the motion may submit affidavits and documentation supporting the claim for punitive damages. A party opposing the motion may submit opposing affidavits and documentation. The court may not allow a party to assert a claim for punitive damages unless the affidavits and supporting documentation submitted by the party seeking punitive damages set forth specific facts supported by admissible evidence adequate to establish the existence of a triable issue on all elements of a punitive damages claim.

(6) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(7) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

(8) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (8)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based on the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based on the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (8)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (8)(b).

(9) (a) The judge shall divide the award of punitive damages equally between the prevailing party and the state and shall enter judgment accordingly.

(b) Upon entry of a judgment awarding punitive damages, the prevailing party shall provide written notice of the judgment to the state through the attorney general.

(c) The costs of litigation related to the award of punitive damages may be deducted from the full award of punitive damages.

(d) Reasonable attorney fees related to the award of punitive damages may be deducted from the full award of punitive damages after costs, but attorney fees deducted from the state's share may not exceed 20% of the state's share of the award of punitive damages after costs.

(e) The award to the state must be deposited in the general fund.

(f) The state has no interest in or right to intervene at any stage of a judicial proceeding pursuant to this subsection (9) except to enforce or execute a judgment entered in favor of the state.

(g) This subsection (9) does not apply to an award of punitive damages of $200,000 or less.

(10) The jury may not be advised of the requirements under subsection (9) concerning the allocation of money received in payment of an award of punitive damages.

(11) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth.

(12) Subsections (9) and (10) do not apply to actions in which the state is a party.

**History: En. Sec. 4290, Civ. C. 1895; re-en. Sec. 6047, Rev. C. 1907; re-en. Sec. 8666, R.C.M. 1921; Cal. Civ. C. Sec. 3294; Field. Civ. C. Sec. 1839; re-en. Sec. 8666, R.C.M. 1935; R.C.M. 1947, 17-208; amd. Sec. 2, Ch. 507, L. 1985; amd. Sec. 2, Ch. 627, L. 1987; amd. Sec. 33, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1997; amd. Sec. 1, Ch. 121, L. 2003; amd. Sec. 1, Ch. 658, L. 2023.**

**Cross-References**

State or other governmental entity immune from exemplary and punitive damages, 2-9-105.
Insurance coverage of punitive damages, 33-15-317.

**27-1-222. Exemplary damages for inhumane injuries to animals.** (1) For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence in disregard of humanity, exemplary damages may be given.

(2) As used in this section, "animals" includes ostriches, rheas, and emus.

**History: En. Sec. 4337, Civ. C. 1895; re-en. Sec. 6075, Rev. C. 1907; re-en. Sec. 8693, R.C.M. 1921; Cal. Civ. C. Sec. 3340; Field Civ. C. Sec. 1867; re-en. Sec. 8693, R.C.M. 1935; R.C.M. 1947, 17-408; amd. Sec. 5, Ch. 206, L. 1995.**

**27-1-223. Damages for injuries or death inflicted in duel.** If a person slays or permanently disables another person in a duel in this state, the person shall provide for the maintenance of the spouse and minor children of the person slain or permanently disabled in a manner and at a cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, that is determined by the court and the party is liable for and shall pay all debts of the person slain or permanently disabled.

**History: Ap. p. Sec. 4353, Civ. C. 1895; re-en. Sec. 6079, Rev. C. 1907; re-en. Sec. 8697, R.C.M. 1921; Cal. Civ. C. Sec. 3347; re-en. Sec. 8697, R.C.M. 1935; amd. Sec. 11, Ch. 535, L. 1975; Sec. 17-504, R.C.M. 1947; Ap. p. Sec. 4354, Civ. C. 1895; re-en. Sec. 6080, Rev. C. 1907; re-en. Sec. 8698, R.C.M. 1921; Cal. Civ. C. Sec. 3348; re-en. Sec. 8698, R.C.M. 1935; Sec. 17-505, R.C.M. 1947; R.C.M. 1947, 17-504, 17-505; amd. Sec. 2, Ch. 12, L. 1979; amd. Sec. 562, Ch. 56, L. 2009.**

## Part 3
## Measure of Damages

**Part Cross-References**

Interest on torts, 27-1-210.

**27-1-301. Prescribed damages exclusive of exemplary damages and interest.** The damages prescribed by 27-1-204, 27-1-222, 27-1-223, and this part are exclusive of exemplary damages and interest except where those are expressly mentioned.

**History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605.**

**27-1-302. Damages to be reasonable.** (1) Subject to subsection (2), damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.

(2) In any action arising from bodily injury or death, damages exceeding amounts provided in 27-1-308(2) are unreasonable, unconscionable, and grossly oppressive contrary to substantial justice.

**History: En. Sec. 4366, Civ. C. 1895; re-en. Sec. 6087, Rev. C. 1907; re-en. Sec. 8705, R.C.M. 1921; Cal. Civ. C. Sec. 3359; Field. Civ. C. Sec. 1878; re-en. Sec. 8705, R.C.M. 1935; R.C.M. 1947, 17-607; amd. Sec. 2, Ch. 327, L. 2021.**

**Cross-References**

Relief from forfeiture, 28-1-104.
When provision fixing liquidated damages valid, 28-2-721.

**27-1-303. Limitation of damages for breach of obligation.** A person may not recover a greater amount in damages for the breach of an obligation than the person could have gained by the full performance of the obligation on both sides unless a greater recovery is specified by statute.

**History:** **En. Sec. 4365, Civ. C. 1895; re-en. Sec. 6086, Rev. C. 1907; re-en. Sec. 8704, R.C.M. 1921; Cal. Civ. C. Sec. 3358; Field. Civ. C. Sec. 1877; re-en. Sec. 8704, R.C.M. 1935; R.C.M. 1947, 17-606; amd. Sec. 3, Ch. 12, L. 1979; amd. Sec. 563, Ch. 56, L. 2009.**

**27-1-304. Value of written instrument.** For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

**History:** **En. Sec. 4363, Civ. C. 1895; re-en. Sec. 6084, Rev. C. 1907; re-en. Sec. 8702, R.C.M. 1921; Cal. Civ. C. Sec. 3356; Based on Field. Civ. C. Sec. 1875; re-en. Sec. 8702, R.C.M. 1935; R.C.M. 1947, 17-604.**

**27-1-305. Property of peculiar value.** Where a certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof or against a willful wrongdoer.

**History:** **En. Sec. 4362, Civ. C. 1895; re-en. Sec. 6083, Rev. C. 1907; re-en. Sec. 8701, R.C.M. 1921; Cal. Civ. C. Sec. 3355; Field Civ. C. Sec. 1874; re-en. Sec. 8701, R.C.M. 1935; R.C.M. 1947, 17-603.**

**27-1-306. When replacement value to be allowed.** The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the most recent used car value and pricing information published by an organization nationally recognized for providing information related to used car value and pricing. Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle.

**History:** **En. Sec. 1, Ch. 320, L. 1981; amd. Sec. 1, Ch. 71, L. 1997; amd. Sec. 62, Ch. 51, L. 1999; amd. Sec. 1, Ch. 472, L. 1999; amd. Sec. 21, Ch. 515, L. 1999; amd. Sec. 40, Ch. 130, L. 2005; amd. Sec. 3, Ch. 8, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 8, L. 2025. Amendment effective October 1, 2025.

**27-1-307. Definitions.** As used in 27-1-308 and this section:

(1) "Collateral source" means a payment for something that is later included in a tort award and that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of the plaintiff's immediate family if the plaintiff is obligated to repay a member of the plaintiff's immediate family.

(2) "Health care provider" includes hospitals, institutions, laboratories, doctors, physicians, optometrists, dentists, nurses, therapists, and any other medical or health care facilities, professionals or persons who diagnose, evaluate, treat, or otherwise deliver medical services or treatment to a plaintiff.

(3) (a) "Medical services or treatment" means any actions taken by a health care provider to observe, identify, diagnose, stabilize, address, ameliorate, correct, remedy, rehabilitate, manage, combat, or care for a plaintiff's injury, condition, disease, or disorder or symptoms of a plaintiff's injury, condition, disease, or disorder.

(b) The term includes any equipment, facilities, medicines, drugs, prescriptions, devices, or products provided or applied to a plaintiff by a health care provider or consumed by a plaintiff at a health care provider's direction.

(4) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(5) (a) "Plaintiff" means a person who alleges to have sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

**History:** En. Sec. 1, Ch. 628, L. 1987; amd. Sec. 132, Ch. 42, L. 1997; amd. Sec. 3, Ch. 327, L. 2021.

**27-1-308. Allowed recovery and permissible evidence — reasonable value of medical or health care services or treatment — actions arising from bodily injury or death — subrogation rights.** (1) (a) The purpose of this section is to abrogate the common law collateral source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as damages for medical services or treatment.

(b) This section does not modify duties owed in accordance with 33-18-201.

(2) In an action arising from bodily injury or death, a plaintiff's recovery may not exceed amounts actually:

(a) paid by or on behalf of the plaintiff to health care providers that rendered reasonable and necessary medical services or treatment to the plaintiff;

(b) necessary to satisfy charges that have been incurred and at the time of trial are still owing and payable to health care providers for reasonable and necessary medical services or treatment rendered to the plaintiff; and

(c) necessary to provide for any future reasonable and necessary medical services or treatment for the plaintiff.

(3) The jury shall determine its award for the reasonable value of medical services or treatment without consideration of any charges for medical services or treatment that were included on health care providers' bills but resolved by way of contractual discount, price reduction, disallowance, gift, writeoff, or otherwise not paid. Evidence admissible to establish the reasonable value of medical services or treatment is limited to evidence identifying the amounts actually:

(a) paid by or on behalf of the plaintiff, regardless of the source of payment, to satisfy the financial obligation for medical services or treatment that the plaintiff received;

(b) necessary to satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred but not yet satisfied. This evidence may not include any reference to sums that exceed the amount for which the unpaid charges could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible, regardless of whether the incurred but not yet satisfied charges have been or will be submitted to the plaintiff's health insurance or public or government-sponsored health care benefit program.

(c) necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible.

(4) If prior to trial a defendant, a defendant's insurer or authorized representative, or any combination of the three pays any part of the financial obligation for medical services or treatment provided to the plaintiff, then prior to the entry of judgment the court shall reduce the sum awarded to the plaintiff at trial by the amount of the payment or other collateral source as defined in 27-1-307.

(5) Except for subrogation rights specifically granted by state or federal law or provided by contract, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source for an award entered as provided in subsection (2).

**History:** **En. Sec. 2, Ch. 628, L. 1987; amd. Sec. 564, Ch. 56, L. 2009; amd. Sec. 4, Ch. 327, L. 2021.**

**27-1-309 reserved.**

**27-1-310. Damages for emotional or mental distress prohibited in contract actions — exception.** In an action for breach of an obligation or duty arising from contract, recovery is prohibited for emotional or mental distress, except in those actions involving actual physical injury to the plaintiff. Emotional or mental distress, as used in this section, includes mental anguish or suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry.

**History:** **En. Sec. 1, Ch. 488, L. 1987.**

**27-1-311. Breach of contract.** For the breach of an obligation arising from contract, the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract.

**History:** **Ap. p. Sec. 4300, Civ. C. 1895; re-en. Sec. 6048, Rev. C. 1907; re-en. Sec. 8667, R.C.M. 1921; Cal. Civ. C. Sec. 3300; Based on Field Civ. C. Sec. 1840; re-en. Sec. 8667, R.C.M. 1935; Sec. 17-301, R.C.M. 1947; Ap. p. Sec. 4301, Civ. C. 1895; re-en. Sec. 6049, Rev. C. 1907; re-en. Sec. 8668, R.C.M. 1921; Cal. Civ. C. Sec. 3301; Field Civ. C. Sec. 1841; re-en. Sec. 8668, R.C.M. 1935; Sec. 17-302, R.C.M. 1947; R.C.M. 1947, 17-301, 17-302; amd. Sec. 4, Ch. 12, L. 1979.**

**Cross-References**

Contracts, Title 28, ch. 2.

Remedies for contracts not written in plain language, 30-14-1111, 30-14-1112.

**27-1-312. Breach of obligation to pay money.** The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

**History:** **En. Sec. 4302, Civ. C. 1895; re-en. Sec. 6050, Rev. C. 1907; re-en. Sec. 8669, R.C.M. 1921; Cal. Civ. C. Sec. 3302; Field Civ. C. Sec. 1842; re-en. Sec. 8669, R.C.M. 1935; R.C.M. 1947, 17-303.**

**Cross-References**

Civil liability for issuing bad check, 27-1-717.

**27-1-313. Breach of warranty of agent's authority.** The detriment caused by the breach of a warranty of an agent's authority is considered to be the amount that could have been recovered and collected from the principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against the principal.

**History:** **En. Sec. 4318, Civ. C. 1895; re-en. Sec. 6066, Rev. C. 1907; re-en. Sec. 8684, R.C.M. 1921; Cal. Civ. C. Sec. 3318; Field Civ. C. Sec. 1858; re-en. Sec. 8684, R.C.M. 1935; R.C.M. 1947, 17-318; amd. Sec. 565, Ch. 56, L. 2009.**

**Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**27-1-314. Breach of agreement to convey real property.** The detriment caused by the breach of an agreement to convey an estate in real property is considered to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon. If the breach was in bad faith and the agreed price was less than the value of the estate, the detriment is also considered to include the difference between the agreed price and the value of the estate at the time of the breach and the expenses properly incurred in preparing to enter upon the land.

**History:** **En. Sec. 4306, Civ. C. 1895; re-en. Sec. 6054, Rev. C. 1907; re-en. Sec. 8672, R.C.M. 1921; Cal. Civ. C. Sec. 3306; Field Civ. C. Sec. 1846; re-en. Sec. 8672, R.C.M. 1935; R.C.M. 1947, 17-306; amd. Sec. 5, Ch. 12, L. 1979.**

**Cross-References**

Transfer of real property, Title 70, ch. 20.

**27-1-315. Breach of agreement to buy real property.** The detriment caused by the breach of an agreement to purchase an estate in real property is considered to be the excess, if any, of the amount that would have been due to the seller under the contract over the value of the property to the seller.

**History:** **En. Sec. 4307, Civ. C. 1895; re-en. Sec. 6055, Rev. C. 1907; re-en. Sec. 8673, R.C.M. 1921; Cal. Civ. C. Sec. 3307; Field Civ. C. Sec. 1847; re-en. Sec. 8673, R.C.M. 1935; R.C.M. 1947, 17-307; amd. Sec. 566, Ch. 56, L. 2009.**

**27-1-316. Breach of covenants in grants of estates in real property.** (1) The detriment caused by the breach of a covenant of seisin, of right to convey, of warranty, or of quiet enjoyment in a grant of an estate in real property is considered to be:

(a) the price paid to the grantor or, if the breach is partial only, the proportion of the price that the value of the property affected by the breach bore at the time of the grant to the value of the whole property;

(b) interest on the portion of the price for the time during which the grantee derived no benefit from the property, not exceeding 5 years; and

(c) any expenses properly incurred by the covenantee in defending possession.

(2) The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property is considered to be the amount that has been actually expended by the covenantee in extinguishing either the principal or interest of the amount, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole or, in the latter case, interest on a like amount.

**History:** **(1)En. Sec. 4304, Civ. C. 1895; re-en. Sec. 6052, Rev. C. 1907; re-en. Sec. 8670, R.C.M. 1921; Cal. Civ. C. Sec. 3304; Based on Field Civ. C. Sec. 1844; re-en. Sec. 8670, R.C.M. 1935; Sec. 17-304, R.C.M. 1947; (2) En. Sec. 4305, Civ. C. 1895; re-en. Sec. 6053, Rev. C. 1907; re-en. Sec. 8671, R.C.M. 1921; Cal. Civ. C. Sec. 3305; Field Civ. C. Sec. 1845; re-en. Sec. 8671, R.C.M. 1935; Sec. 17-305, R.C.M. 1947; R.C.M. 1947, 17-304, 17-305; amd. Sec. 567, Ch. 56, L. 2009.**

**Cross-References**

Covenants running with land, Title 70, ch. 17.

**27-1-317. Breach of obligation other than contract.** For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

**History:** **En. Sec. 4330, Civ. C. 1895; re-en. Sec. 6068, Rev. C. 1907; re-en. Sec. 8686, R.C.M. 1921; Cal. Civ. C. Sec. 3333; Field. Civ. C. Sec. 1860; re-en. Sec. 8686, R.C.M. 1935; R.C.M. 1947, 17-401.**

**27-1-318. Wrongful occupation of real property.** The detriment caused by the wrongful occupation of real property in cases not otherwise provided for in this code is deemed to be the value of the use of the property for the time of such occupation, not exceeding 5 years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

**History:** **En. Sec. 4331, Civ. C. 1895; re-en. Sec. 6069, Rev. C. 1907; re-en. Sec. 8687, R.C.M. 1921; Cal. Civ. C. Sec. 3334; Based on Field Civ. C. Sec. 1861; re-en. Sec. 8687, R.C.M. 1935; R.C.M. 1947, 17-402.**

**Cross-References**

Real property actions generally, Title 70, ch. 19.

**27-1-319. Willful holding over of real property.** For willfully holding over real property by a person who entered upon the same as guardian or trustee for a minor or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

**History:** **En. Sec. 4332, Civ. C. 1895; re-en. Sec. 6070, Rev. C. 1907; re-en. Sec. 8688, R.C.M. 1921; Cal. Civ. C. Sec. 3335; Field. Civ. C. Sec. 1862; re-en. Sec. 8688, R.C.M. 1935; R.C.M. 1947, 17-403; amd. Sec. 3, Ch. 2, L. 1983.**

**27-1-320. Conversion of personal property.** (1) The detriment caused by the wrongful conversion of personal property is presumed to be:

(a) the value of the property at the time of its conversion with the interest from that time or, when the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and

(b) a fair compensation for the time and money properly expended in pursuit of the property.

(2) The presumption declared by subsection (1) cannot be rebutted in favor of one whose possession was wrongful from the beginning by that person's subsequent application of the property to the benefit of the owner without the owner's consent.

**History: (1)En. Sec. 4333, Civ. C. 1895; re-en. Sec. 6071, Rev. C. 1907; re-en. Sec. 8689, R.C.M. 1921; Cal. Civ. C. Sec. 3336; Field Civ. C. Sec. 1863; re-en. Sec. 8689, R.C.M. 1935; Sec. 17-404, R.C.M. 1947; (2)En. Sec. 4334, Civ. C. 1895; re-en. Sec. 6072, Rev. C. 1907; re-en. Sec. 8690, R.C.M. 1921; Cal. Civ. C. Sec. 3337; Field. Civ. C. Sec. 1864; re-en. Sec. 8690, R.C.M. 1935; Sec. 17-405, R.C.M. 1947; R.C.M. 1947, 17-404, 17-405; amd. Sec. 6, Ch. 12, L. 1979; amd. Sec. 568, Ch. 56, L. 2009.**

**27-1-321. Conversion of personal property — damages of lienholder.** A person having a mere lien on personal property cannot recover greater damages for the property's conversion, from a person having a right to the property superior to the person holding the lien after the lien is discharged, than the amount secured by the lien and the compensation allowed by 27-1-320(1) for the loss of time and expenses.

**History: En. Sec. 4335, Civ. C. 1895; re-en. Sec. 6073, Rev. C. 1907; re-en. Sec. 8691, R.C.M. 1921; Cal. Civ. C. Sec. 3338; Field Civ. C. Sec. 1865; re-en. Sec. 8691, R.C.M. 1935; R.C.M. 1947, 17-406; amd. Sec. 569, Ch. 56, L. 2009.**

**27-1-322. Seduction.** The damages for seduction rest in the sound discretion of the jury.

**History: En. Sec. 4336, Civ. C. 1895; re-en. Sec. 6074, Rev. C. 1907; re-en. Sec. 8692, R.C.M. 1921; Cal. Civ. C. Sec. 3339; Field Civ. C. Sec. 1866; re-en. Sec. 8692, R.C.M. 1935; R.C.M. 1947, 17-407.**

**Cross-References**

Who may sue for whose seduction, 27-1-514.

Time for commencement of action 2 years, 27-2-204.

**27-1-323. Wrongful death.** In every action under 27-1-513, such damages may be given as under all the circumstances of the case may be just.

**History: En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 1, Ch. 449, L. 1987.**

**Cross-References**

Damages for personal injury or wrongful death not to be stated, 25-4-311.

Action for wrongful death, 27-1-513.

## Part 4
## Specific and Preventive Relief

**27-1-401. When specific or preventive relief permitted.** Specific or preventive relief may be given in the cases specified in this part and Title 28, chapter 2, parts 16 and 17, and in no others. Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, or to enforce the penalty or forfeiture in any case.

**History: Ap. p. Sec. 4380, Civ. C. 1895; re-en. Sec. 6089, Rev. C. 1907; re-en. Sec. 8707, R.C.M. 1921; Cal. Civ. C. Sec. 3366; Field Civ. C. Sec. 1880; re-en. Sec. 8707, R.C.M. 1935; Sec. 17-701, R.C.M. 1947; Ap. p. Sec. 4383, Civ. C. 1895; re-en. Sec. 6092, Rev. C. 1907; re-en. Sec. 8710, R.C.M. 1921; Cal. Civ. C. Sec. 3369; Field Civ. C. Sec. 1883; re-en. Sec. 8710, R.C.M. 1935; Sec. 17-704, R.C.M. 1947; R.C.M. 1947, 17-701, 17-704.**

**Cross-References**

U.C.C. — buyer's remedies in general, 30-2-711.

U.C.C. — buyer's right to specific performance, 30-2-716.

Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

**27-1-402. How specific relief given.** Specific relief is given by:

(1) taking possession of a thing and delivering it to a claimant;

(2) compelling the party to do that which ought to be done; or

(3) declaring and determining the rights of parties otherwise than by an award of damages.

**History: En. Sec. 4381, Civ. C. 1895; re-en. Sec. 6090, Rev. C. 1907; re-en. Sec. 8708, R.C.M. 1921; Cal. Civ. C. Sec. 3367; Field Civ. C. Sec. 1881; re-en. Sec. 8708, R.C.M. 1935; R.C.M. 1947, 17-702; amd. Sec. 570, Ch. 56, L. 2009.**

**Cross-References**

What ought to have been done, 1-3-220.

**27-1-403. How preventive relief given.** Preventive relief is given by prohibiting a party from doing that which ought not to be done. Preventive relief is granted by injunction, provisional or final.

**History:** **Ap. p. Sec. 4382, Civ. C. 1895; re-en. Sec. 6091, Rev. C. 1907; re-en. Sec. 8709, R.C.M. 1921; Cal. Civ. C. Sec. 3368; Field. Civ. C. Sec. 1882; re-en. Sec. 8709, R.C.M. 1935; Sec. 17-703, R.C.M. 1947; Ap. p. Sec. 4460, Civ. C. 1895; re-en. Sec. 6118, Rev. C. 1907; re-en. Sec. 8736, R.C.M. 1921; Cal. Civ. C. Sec. 3420; Field Civ. C. Sec. 1909; re-en. Sec. 8736, R.C.M. 1935; Sec. 17-1101, R.C.M. 1947; R.C.M. 1947, 17-703, 17-1101.**

**Cross-References**

Injunctions, Title 27, ch. 19.

**27-1-404 through 27-1-410 reserved.**

**27-1-411. When specific performance of an obligation may be compelled.** Except as otherwise provided in this part and Title 28, chapter 2, parts 16 and 17, the specific performance of an obligation may be compelled when:

(1) the act to be done is in the performance, wholly or partly, of an express trust;

(2) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;

(3) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or

(4) it has been expressly agreed in writing, between the parties to the contract, that specific performance thereof may be required by either party or that damages shall not be considered adequate relief.

**History:** **En. Sec. 4410, Civ. C. 1895; re-en. Sec. 6096, Rev. C. 1907; re-en. Sec. 8714, R.C.M. 1921; Cal. Civ. C. Sec. 3384; Field Civ. C. Sec. 1887; re-en. Sec. 8714, R.C.M. 1935; R.C.M. 1947, 17-801.**

**Cross-References**

U.C.C. — buyer's rights to specific performance or recovery of goods, 30-2-716.

**27-1-412. Obligations which cannot be specifically enforced.** The following obligations cannot be specifically enforced:

(1) an obligation to render personal service or to employ another therein;

(2) an agreement to marry or live with another;

(3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;

(4) an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or

(5) an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

**History:** **En. Sec. 4416, Civ. C. 1895; re-en. Sec. 6102, Rev. C. 1907; re-en. Sec. 8720, R.C.M. 1921; Cal. Civ. C. Sec. 3390; Field Civ. C. Sec. 1893; re-en. Sec. 8720, R.C.M. 1935; amd. Sec. 12, Ch. 535, L. 1975; R.C.M. 1947, 17-807; amd. Sec. 23, Ch. 684, L. 1985.**

**Cross-References**

Cause of action for breach of promise to marry abolished, 27-1-602.
Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

**27-1-413. Specific performance not to be oppressive.** Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

**History:** **En. Sec. 4419, Civ. C. 1895; re-en. Sec. 6105, Rev. C. 1907; re-en. Sec. 8723, R.C.M. 1921; Field Civ. C. Sec. 1896; re-en. Sec. 8723, R.C.M. 1935; R.C.M. 1947, 17-810.**

**27-1-414. Right to specific performance to be mutual.** (1) When either of the parties to an obligation is entitled to a specific performance thereof according to the provisions of 27-1-411, the other party is also entitled to it, though not within those provisions.

(2) Neither party to any obligation can be compelled specifically to perform it unless the other party thereto has performed or is compellable specifically to perform everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

**History:** **(1)En. Sec. 4411, Civ. C. 1895; re-en. Sec. 6097, Rev. C. 1907; re-en. Sec. 8715, R.C.M. 1921; Cal. Civ. C. Sec. 3385; Field Civ. C. Sec. 1888; re-en. Sec. 8715, R.C.M. 1935; Sec. 17-802, R.C.M. 1947; (2)En. Sec. 4412, Civ. C. 1895; re-en. Sec. 6098, Rev. C. 1907; re-en. Sec. 8716, R.C.M. 1921; Cal. Civ. C. Sec. 3386; Field Civ. C. Sec. 1889; re-en. Sec. 8716, R.C.M. 1935; Sec. 17-803, R.C.M. 1947; R.C.M. 1947, 17-802, 17-803.**

**27-1-415. Parties who cannot be compelled to perform.** Specific performance cannot be enforced against a party to a contract in any of the following cases:

(1) if the party has not received an adequate consideration for the contract;

(2) if it is not, as to the party, just and reasonable;

(3) if the party's assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of the party that has not been substantially fulfilled; or

(4) if the party's assent was given under the influence of mistake, misapprehension, or surprise, except that when the contract provides for compensation in case of mistake, a mistake within the scope of the provision may be compensated for and the contract specifically enforced in other respects if proper to be so enforced.

**History: En. Sec. 4417, Civ. C. 1895; re-en. Sec. 6103, Rev. C. 1907; re-en. Sec. 8721, R.C.M. 1921; Cal. Civ. C. Sec. 3391; Field Civ. C. Sec. 1894; re-en. Sec. 8721, R.C.M. 1935; R.C.M. 1947, 17-808; amd. Sec. 571, Ch. 56, L. 2009.**

**27-1-416. Parties who cannot obtain specific performance.** Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on that party's part to the obligation of the other party except when the nonperforming party's failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

**History: En. Sec. 4418, Civ. C. 1895; re-en. Sec. 6104, Rev. C. 1907; re-en. Sec. 8722, R.C.M. 1921; Cal. Civ. C. Sec. 3392; Field Civ. C. Sec. 1895; re-en. Sec. 8722, R.C.M. 1935; R.C.M. 1947, 17-809; amd. Sec. 572, Ch. 56, L. 2009.**

**27-1-417. Specific performance by party who signed when other party did not sign contract.** A party who has signed a written contract may be compelled specifically to perform the contract, even though the other party has not signed the contract, if the latter has performed or offers to perform the contract and the case is otherwise proper for enforcing specific performance.

**History: En. Sec. 4414, Civ. C. 1895; re-en. Sec. 6100, Rev. C. 1907; re-en. Sec. 8718, R.C.M. 1921; Cal. Civ. C. Sec. 3388; Field. Civ. C. Sec. 1891; re-en. Sec. 8718, R.C.M. 1935; R.C.M. 1947, 17-805; amd. Sec. 573, Ch. 56, L. 2009.**

**27-1-418. Liquidation of damages not a bar to specific performance.** A contract otherwise proper to be specifically enforced may be thus enforced though a penalty is imposed or the damages are liquidated for its breach and the party in default is willing to pay the same.

**History: En. Sec. 4415, Civ. C. 1895; re-en. Sec. 6101, Rev. C. 1907; re-en. Sec. 8719, R.C.M. 1921; Cal. Civ. C. Sec. 3389; Field Civ. C. Sec. 1892; re-en. Sec. 8719, R.C.M. 1935; R.C.M. 1947, 17-806.**

**27-1-419. Specific performance of agreement to transfer property — distinction between real and personal property.** It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation and that the breach of an agreement to transfer personal property can be thus relieved.

**History: En. Sec. 4413, Civ. C. 1895; re-en. Sec. 6099, Rev. C. 1907; re-en. Sec. 8717, R.C.M. 1921; Cal. Civ. C. Sec. 3387; Field Civ. C. Sec. 1890; re-en. Sec. 8717, R.C.M. 1935; R.C.M. 1947, 17-804.**

**27-1-420. No specific performance of agreement to buy property when title not clear.** An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

**History: En. Sec. 4420, Civ. C. 1895; re-en. Sec. 6106, Rev. C. 1907; re-en. Sec. 8724, R.C.M. 1921; Cal. Civ. C. Sec. 3394; Field Civ. C. Sec. 1897; re-en. Sec. 8724, R.C.M. 1935; R.C.M. 1947, 17-811.**

**27-1-421. Compelling performance of successor in interest in title — obligations respecting real property.** Whenever an obligation in respect to real property would be specifically enforced against a particular person, the obligation may be in the same manner enforced against any other person claiming under the particular person by a title created subsequently to the obligation except a purchaser or encumbrancer in good faith and for value and except that any other person may be exonerated by conveying all of that person's estate to the person entitled to enforce the obligation.

**History: En. Sec. 4421, Civ. C. 1895; re-en. Sec. 6107, Rev. C. 1907; re-en. Sec. 8725, R.C.M. 1921; Cal. Civ. C. Sec. 3395; Field Civ. C. Sec. 1898; re-en. Sec. 8725, R.C.M. 1935; R.C.M. 1947, 17-812; amd. Sec. 574, Ch. 56, L. 2009.**

**27-1-422 through 27-1-430 reserved.**

**27-1-431. Judgment for possession of or title to real property.** A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by this code, either by a judgment for its possession to be executed by the sheriff or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

**History: En. Sec. 4390, Civ. C. 1895; re-en. Sec. 6093, Rev. C. 1907; re-en. Sec. 8711, R.C.M. 1921; Cal. Civ. C. Sec. 3375; Field. Civ. C. Sec. 1884; re-en. Sec. 8711, R.C.M. 1935; R.C.M. 1947, 17-705.**

**Cross-References**

Execution of judgment, Title 25, ch. 13.

**27-1-432. Judgment for delivery of personal property.** A person entitled to the immediate possession of specific personal property may recover the property in the manner provided by this code. A person having the possession or control of a particular article of personal property of which the person is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession.

**History: Ap. p. Sec. 4400, Civ. C. 1895; re-en. Sec. 6094, Rev. C. 1907; re-en. Sec. 8712, R.C.M. 1921; Cal. Civ. C. Sec. 3379; Field Civ. C. Sec. 1885; re-en. Sec. 8712, R.C.M. 1935; Sec. 17-706, R.C.M. 1947; Ap. p. Sec. 4401, Civ. C. 1895; re-en. Sec. 6095, Rev. C. 1907; re-en. Sec. 8713, R.C.M. 1921; Cal. Civ. C. Sec. 3380; Based on Field Civ. C. Sec. 1886; re-en. Sec. 8713, R.C.M. 1935; Sec. 17-707, R.C.M. 1947; R.C.M. 1947, 17-706, 17-707; amd. Sec. 575, Ch. 56, L. 2009.**

**Cross-References**

Execution of judgment, Title 25, ch. 13.

**27-1-433. Cancellation of written instrument.** (1) A written instrument in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable may, upon that person's application, be adjudged and ordered to be delivered up or canceled.

(2) An instrument the invalidity of which is apparent upon its face or upon the face of another instrument that is necessary to the use of the former instrument in evidence is not to be considered capable of causing injury within the provisions of subsection (1).

(3) When an instrument is evidence of different rights or obligations, it may be canceled in part and allowed to stand for the residue.

**History: (1)En. Sec. 4450, Civ. C. 1895; re-en. Sec. 6115, Rev. C. 1907; re-en. Sec. 8733, R.C.M. 1921; Cal. Civ. C. Sec. 3412; Field Civ. C. Sec. 1906; re-en. Sec. 8733, R.C.M. 1935; Sec. 17-1001, R.C.M. 1947; (2)En. Sec. 4451, Civ. C. 1895; re-en. Sec. 6116, Rev. C. 1907; re-en. Sec. 8734, R.C.M. 1921; Cal. Civ. C. Sec. 3413; Field Civ. C. Sec. 1907; re-en. Sec. 8734, R.C.M. 1935; Sec. 17-1002, R.C.M. 1947; (3)En. Sec. 4452, Civ. C. 1895; re-en. Sec. 6117, Rev. C. 1907; re-en. Sec. 8735, R.C.M. 1921; Cal. Civ. C. Sec. 3414; Field Civ. C. Sec. 1908; re-en. Sec. 8735, R.C.M. 1935; Sec. 17-1003, R.C.M. 1947; R.C.M. 1947, 17-1001, 17-1002, 17-1003; amd. Sec. 576, Ch. 56, L. 2009.**

**27-1-434. Cost of care of animals seized in animal cruelty and animal fighting cases.** (1) When an animal is seized from a person by a law enforcement officer upon an alleged violation of 45-8-210, 45-8-211, or 45-8-217, the prosecutor may file a petition for a cost of care hearing in district court in the county where the seizure was made.

(2) The petition must contain:

(a) the authority and purpose of the seizure, including the time, place, and circumstances of the seizure and the purported facts regarding any animal cruelty or forced fighting in violation of 45-8-210, 45-8-211, or 45-8-217;

(b) a description of the animal, including its current condition, and any facts demonstrating the animal's significant disease, injury, or suffering;

(c) the name and address of the respondent unless the name and address of the respondent are not available to the petitioner after reasonable investigation, at which time the petition must contain the address of the premises where the animal was seized; and

(d) an evaluation that supports the animal's significant disease, injury, or suffering from a licensed veterinarian with experience treating the type of animal or animals in question. Livestock seized under this section must be evaluated by a large animal veterinarian in coordination with a state livestock inspector that is considered a law enforcement officer as designated by the department of livestock in 81-1-201.

(3) The petitioner shall serve a copy of the petition upon the respondent. If the name and address of the respondent are not available after reasonable investigation, the petition must be conspicuously posted by a law enforcement officer at the premises where the animal was seized.

(4) Upon receipt of the petition, the court shall set the matter for hearing not more than 10 days after the petition was filed with the clerk of court. The court shall notify the respondent in writing of the date and location of the hearing within 5 days of the hearing. If the name and address of the respondent are not available and have not been included in the petition, the notice must be conspicuously posted by a law enforcement officer at the premises where the animal was seized.

(5) At the hearing, the court shall consider the extent of the animal's disease, injury, or suffering and, no more than 5 days after the hearing, shall determine whether the animal will be:

(a) released to the respondent if the court does not find, by a preponderance of evidence submitted, that the animal was subjected to cruelty or forced fighting under 45-8-210, 45-8-211, or 45-8-217; or

(b) held and cared for by the county or an animal shelter designated by the county, pending disposition of a criminal proceeding initiated for an alleged violation of 45-8-210, 45-8-211, or 45-8-217.

(6) (a) If the court finds, by a preponderance of evidence submitted, that the animal was subjected to cruelty or forced fighting under 45-8-210, 45-8-211, or 45-8-217, the court may not release the animal to the respondent and shall set a renewable bond in an amount sufficient to cover the reasonable expenses expected to be incurred in caring for the animal for a period of 30 days.

(b) In setting the amount of bond to be posted, the court shall consider all of the facts and circumstances of the seizure, including but not limited to the need to care for the animal pending disposition of the criminal proceeding, the recommendations of the animal's current caretaker, and the estimated costs of caring for the animal. The court may take into consideration:

(i) the respondent's ability to pay for the cost of the animal's care, with the understanding that the ability to pay is not dispositive;

(ii) the likelihood that the respondent could care for the animal in the future; and

(iii) the respondent's ability to otherwise provide for the animal's care by other means while the animal is in the possession and care of the county.

(c) Upon an order of the court that a bond be posted, the amount of funds necessary for 30 days of the animal's care must be posted with the court. Unless the amount is adjusted pursuant to a hearing held as provided in subsection (6)(d), the court shall order the respondent to deposit the same amount every 30 days until final disposition of the criminal proceeding. Required payment dates must be included in the court's order, and the court has discretion to set the bond payment frequency less than 30 days.

(d) The respondent may request a hearing no fewer than 5 days before the expiration of the 30-day period, and the court may, upon a motion by a respondent, adjust the amount of reasonable expenses to be provided by the respondent.

(e) If the ordered funds are not deposited within 5 days of the payment dates set in the order, the ownership of the animal is forfeited to the county. The county has discretion of the animal and shall provide the court with all plans of disposal related to the animal.

(f) Once a bond has been posted in accordance with this section, the entity caring for the animal may draw from the bond the actual costs incurred in caring for the animal from the date of the cost of care hearing to the date of the final disposition of the criminal proceeding.

(g) In lieu of bond, the respondent may submit to the county a lien on real property necessary to cover the estimated costs of care for the duration of the proceedings. The lien must be in a form and manner acceptable to the county and must be presented by an authorized owner or agent of the property encumbered.

(7) (a) Upon final disposition of the criminal proceeding, any remaining funds deposited with the court must be returned to the depositor.

(b) If the respondent is found not guilty of criminal charges in connection with the seized animal, the county shall:

(i) immediately return the animal to the respondent and return the full amount of the bond and release any applicable lien accepted in lieu of bond; or

(ii) pay the respondent the fair market value of the animal at the time of seizure, if ownership of the animal was forfeited to the county because the bond was not paid. Fair market value must be determined by the court after considering any relevant testimony, valuations, or affidavits specifically describing pecuniary loss and replacement value of the loss.

(8) An animal seized from a person for an alleged violation of 45-8-210, 45-8-211, or 45-8-217 may immediately be euthanized if, in the written determination of a licensed veterinarian, the animal is injured or diseased to the extent that it is not likely to recover. If the respondent is found not guilty of criminal charges in connection with a seized animal that was euthanized while in the possession and care of the county, the county shall pay the respondent the fair market value of the animal. The fair market value must be based on the value of the animal at the time of seizure of the animal as established by relevant testimony and valuations.

(9) For the purposes of this section, the following definitions apply:

(a) "Reasonable expenses" means the cost of providing care, including but not limited to food, water, shelter, and necessary veterinary care to an animal. Reasonable expenses do not include costs that arise from disease, injury, or suffering sustained by an animal while in the possession and care of the county.

(b) "Respondent" means the owner or owners of an animal seized by law enforcement upon an alleged violation of 45-8-210, 45-8-211, or 45-8-217.

**History: En. Sec. 3, Ch. 366, L. 2003; amd. Sec. 1, Ch. 328, L. 2019.**

## Part 5
## Right to Bring Action or Assert Defense

**27-1-501. Survival of cause of action or defense — death or disability or transfer of interest.** (1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest in the action or defense, but whenever the cause of action or defense arose in favor of the party prior to the party's death or disability or transfer of interest, the action or defense survives and may be maintained by the party's representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of the party's representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

(2) Actions brought under 27-1-513 and this section must be combined in one legal action, and any element of damages may be recovered only once.

**History: En. Sec. 16, p. 45, Bannack Stat.; re-en. Sec. 16, p. 137, L. 1867; re-en. Sec. 16, p. 29, Cod. Stat. 1871; amd. Sec. 22, p. 43, L. 1877; re-en. Sec. 22, 1st Div. Rev. Stat. 1879; en. Sec. 1, p. 98, L. 1883; re-en. Sec. 22, 1st Div. Comp. Stat. 1887; amd. Sec. 587, C. Civ. Proc. 1895; re-en. Sec. 6494, Rev. C. 1907; re-en. Sec. 9086, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 385; re-en. Sec. 9086, R.C.M. 1935; repealed Sec. 84, Ch. 13, L. 1961; reinstated Sec. 2, Ch. 14, L. 1963; R.C.M. 1947, 93-2824; amd. Sec. 7, Ch. 12, L. 1979; amd. Sec. 2, Ch. 449, L. 1987; amd. Sec. 577, Ch. 56, L. 2009.**

**27-1-502. Survival of counterclaim — death or assignment.** When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been set up, the two demands shall be deemed compensated so far as they equal each other and neither can be deprived of the benefit thereof by the assignment or death of the other.

**History: En. Sec. 48, p. 52, Bannack Stat.; re-en. Sec. 48, p. 143, L. 1867; re-en. Sec. 58, p. 39, Cod. Stat. 1871; re-en. Sec. 89, p. 61, L. 1877; re-en. Sec. 89, 1st Div. Rev. Stat. 1879; re-en. Sec. 91, 1st Div. Comp. Stat. 1887; amd. Sec. 698, C. Civ. Proc. 1895; re-en. Sec. 6548, Rev. C. 1907; re-en. Sec. 9145, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 440; re-en. Sec. 9145, R.C.M. 1935; R.C.M. 1947, 93-3409.**

**27-1-503. What defenses to action survive assignment of right to action.** In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of or before notice of the assignment, but this section shall apply only to the extent not otherwise provided for in the Uniform Commercial Code.

**History: En. Sec. 5, p. 44, Bannack Stat.; re-en. Sec. 5, p. 136, L. 1867; re-en. Sec. 5, p. 28, Cod. Stat. 1871; re-en. Sec. 5, p. 40, L. 1877; re-en. Sec. 5, 1st Div. Rev. Stat. 1879; re-en. Sec. 5, 1st Div. Comp. Stat. 1887; re-en. Sec. 571, C. Civ. Proc. 1895; re-en. Sec. 6478, Rev. C. 1907; re-en. Sec. 9068, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 368; re-en. Sec. 9068, R.C.M. 1935; amd. Sec. 11-157, Ch. 264, L. 1963; R.C.M. 1947, 93-2802.**

**Cross-References**

Uniform Commercial Code, Title 30, ch. 1 through 9A.

### 27-1-504 through 27-1-510 reserved.

**27-1-511. Right of minor to bring civil action or other proceeding.** A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as a person of full age except that a guardian shall conduct the the action or proceedings.

**History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114; amd. Sec. 578, Ch. 56, L. 2009.**

**Cross-References**

When guardian necessary — how appointed, 25-31-602.
Small claims procedure — parties — representation, 25-35-505.
Enforcement of minor's rights, 41-1-202.

**27-1-512. Action by parent or guardian for injury to child or ward.** Either parent may maintain an action for the injury to a minor child and a guardian for injury to a ward when the injury is caused by the wrongful act or neglect of another. The action may be maintained against the person causing the injury or, if the person is employed by another person who is responsible for the causing person's conduct, also against the other responsible person.

**History: En. Sec. 11, p. 44, Bannack Stat.; amd. Sec. 11, p. 136, L. 1867; re-en. Sec. 11, p. 29, Cod. Stat. 1871; re-en. Sec. 13, p. 42, L. 1877; re-en. Sec. 13, 1st Div. Rev. Stat. 1879; re-en. Sec. 13, 1st Div. Comp. Stat. 1887; amd. Sec. 578, C. Civ. Proc. 1895; re-en. Sec. 6485, Rev. C. 1907; re-en. Sec. 9075, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 376; re-en. Sec. 9075, R.C.M. 1935; amd. Sec. 52, Ch. 535, L. 1975; R.C.M. 1947, 93-2809; amd. Sec. 3, Ch. 449, L. 1987; amd. Sec. 579, Ch. 56, L. 2009.**

**27-1-513. Action for wrongful death.** When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if the person is employed by another person who is responsible for the causing person's conduct, then also against the other responsible person.

**History: En. Sec. 1, p. 561, Cod. Stat. 1871; en. Sec. 14, p. 42, L. 1877; re-en. Sec. 14, 1st Div. Rev. Stat. 1879; re-en. Sec. 14, 1st Div. Comp. Stat. 1887; re-en. Sec. 579, C. Civ. Proc. 1895; re-en. Sec. 6486, Rev. C. 1907; re-en. Sec. 9076, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 377; re-en. Sec. 9076, R.C.M. 1935; R.C.M. 1947, 93-2810(part); amd. Sec. 4, Ch. 449, L. 1987; amd. Sec. 580, Ch. 56, L. 2009.**

**Cross-References**

Damages for personal injury or wrongful death not to be stated, 25-4-311.
Request for statement of damages — response, 25-4-312.
Notice to defendant when no request for statement of damages made, 25-4-313.
Permissive delivery of statement of damages with summons, 25-4-314.
Damages for wrongful death, 27-1-323.

**27-1-514. Who may sue for whose seduction.** (1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward is not living with or in the service of the plaintiff at the time of the seduction or afterwards and there is no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for the person's own seduction and may recover damages, pecuniary or exemplary, that are assessed in the person's favor.

**History: (1)En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; Sec. 64-209, R.C.M. 1947; (2)En. Sec. 12, p. 41, L. 1877; re-en. Sec. 12, 1st Div. Rev. Stat. 1879; re-en. Sec. 12, 1st Div. Comp. Stat. 1887; re-en. Sec. 577, C. Civ. Proc. 1895; re-en. Sec. 6484, Rev. C. 1907; re-en. Sec. 9074, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 375; re-en. Sec. 9074, R.C.M. 1935; amd. Sec. 51, Ch. 535, L. 1975; Sec. 92-2808, R.C.M. 1947; (3)En. Sec. 11, p. 41, L. 1877; re-en. Sec. 11, 1st Div. Rev. Stat. 1879; re-en. Sec. 11, 1st Div. Comp. Stat. 1887; re-en. Sec. 576, C. Civ. Proc. 1895; re-en. Sec. 6483, Rev. C. 1907; re-en. Sec. 9073, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 374; re-en. Sec. 9073, R.C.M. 1935; amd. Sec. 50, Ch. 535, L. 1975; Sec. 93-2807, R.C.M. 1947; R.C.M. 1947, 64-209(3), 93-2807, 93-2808; amd. Sec. 581, Ch. 56, L. 2009.**

**Cross-References**

Damages for seduction, 27-1-322.

**27-1-515. Protection of personal relations — abduction.** The rights of personal relations forbid:

(1) the abduction of a parent from a child;

(2) the abduction or enticement of a wife from the wife's husband or a husband from the husband's wife, of a child from a parent or from a guardian entitled to the child's custody, or of a servant from a master.

**History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(1), (2); amd. Sec. 582, Ch. 56, L. 2009.**

**Cross-References**

Unlawful restraint, 45-5-301.

**27-1-516. Injury to servant.** The rights of personal relations forbid any injury to a servant which affects the servant's ability to serve the master.

**History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R.C.M. 1921; Cal. Civ. C. Sec. 49; Field Civ. C. Sec. 32; re-en. Sec. 5693, R.C.M. 1935; amd. Sec. 30, Ch. 535, L. 1975; R.C.M. 1947, 64-209(4).**

**Cross-References**

Agency, Title 28, ch. 10.

**27-1-517 through 27-1-519 reserved.**

**27-1-520. Action against successful bidder — failure to pay standard prevailing wages or unemployment insurance or to carry workers' compensation insurance.** A person who loses a competitive bid on a construction contract may maintain an action for damages against a successful bidder if the successful bidder does not pay standard prevailing wages on a contract where payment of the standard prevailing wage rate is required by Title 18, chapter 2, part 4, does not contribute to the state unemployment insurance fund, as required by 39-51-1103, or does not pay workers' compensation premiums, as required by 39-71-401. If the bids are sealed or for any other reason kept confidential, the person who solicited the bids shall, on request by a bidder who indicates an intent to sue under this section, inform the bidder of the identity of the next lowest valid bidder after the successful bidder. Upon proof that payment by the successful bidder of standard prevailing wages, workers' compensation premiums, and contributions to the state unemployment insurance fund for the job would have increased the successful bidder's bid amount in excess of the plaintiff's bid, the plaintiff may recover damages. The measure of damages is the same as provided in 27-1-311, except that the total amount assessed against the successful bidder by all litigants may not exceed 10% of the successful bidder's bid.

**History: En. Sec. 1, Ch. 478, L. 1991.**

**27-1-521. Private right of action.** (1) A minor who attends a performance in violation of 45-8-118 or 20-7-135 may bring an action against a person who knowingly promotes, conducts, or participates as a performer in the performance. The minor's parent or legal guardian may bring an action in the name of the minor for an action commenced under this section.

(2) If a person prevails in an action brought under this section, the court shall award:

(a) actual damages, including damages for psychological, emotional, economic, and physical harm;

(b) reasonable attorney fees and costs incurred in bringing the action; and

(c) statutory damages of $5,000.

(3) A person may bring an action under this section not later than 10 years from the date the cause of action accrues.

**History: En. Sec. 4, Ch. 719, L. 2023.**

**27-1-522. Person convicted of crime — no right of action for injuries and damages.** A person who is convicted of a crime and is injured or suffers other damages during the commission of the crime does not have a right of action to recover damages if a victim causing the injury or damages did not use any force or used justifiable force, as defined in Title 45, chapter 3, part 1.

**History: En. Sec. 1, Ch. 315, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

## Part 6
## Abolition of Certain Causes of Action

**27-1-601. Cause of action for alienation of affections abolished.** All civil causes of action for alienation of affections of husband or wife are hereby abolished.

**History:** **En. Sec. 1, Ch. 200, L. 1963; R.C.M. 1947, 17-1201(part).**

**27-1-602. Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved.** All causes of action for breach of contract to marry are hereby abolished. However, where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld where such action otherwise is maintainable under existing law.

**History:** **En. Sec. 2, Ch. 200, L. 1963; R.C.M. 1947, 17-1202.**

**Cross-References**

Obligations that cannot be specifically enforced, 27-1-412.

**27-1-603. Acts within Montana not to give rise to abolished cause of action.** No act done within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any of the causes of action abolished by this part. No contract to marry which shall be made within this state after July 1, 1963, shall operate to give rise, either within or without this state, to any cause of action for breach thereof. It is the intention of this part to fix the effect, status, and character of such acts and contracts and to render them ineffective to support or give rise to any such causes of action within or without this state.

**History:** **En. Sec. 3, Ch. 200, L. 1963; R.C.M. 1947, 17-1203.**

**27-1-604. Litigation and threat of litigation prohibited.** Effective July 1, 1963, it shall be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this state any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this part, whether such cause of action arose within or without this state.

**History:** **En. Sec. 4, Ch. 200, L. 1963; R.C.M. 1947, 17-1204.**

**27-1-605. Agreements settling or compromising abolished causes of action.** (1) All contracts and instruments of every kind which, after July 1, 1963, may be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this part, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void.

(2) It shall be unlawful to:

(a) cause, induce, or procure any person to execute such a contract or instrument;

(b) cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action;

(c) receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement, or compromise; or

(d) commence or cause to be commenced, either as litigant or attorney, in any court of this state any proceeding or action seeking to enforce or recover upon any such contract or instrument knowing it to be such, whether the same shall have been executed within or without this state.

(3) However, this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this part or any contracts or instruments heretofore executed or to the bona fide holder in due course of any negotiable instrument which may be executed after July 1, 1963.

**History:** **En. Sec. 5, Ch. 200, L. 1963; R.C.M. 1947, 17-1205.**

**27-1-606. Criminal penalty.** Any person who violates any of the provisions of this part is punishable upon conviction therefor by a fine of not less than $100 or more than $1,000 or imprisonment for a term of not less than 1 year or more than 5 years, in the discretion of the court.

**History: En. Sec. 6, Ch. 200, L. 1963; R.C.M. 1947, 17-1206; amd. Sec. 8, Ch. 12, L. 1979.**

## Part 7
## Liability

**Part Cross-References**

Governmental entities — liability exposure, Title 2, ch. 9.

Governmental liability for actions resulting in surface water and ground water damage, 2-9-111.

Weed management district liability restrictions, 7-22-2111.

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-655.

Accounting review committees — limitation for persons serving on or nonprofit corporations performing as, 37-50-403.

Immunity of public personnel administering or supervising court-ordered service, 45-9-204.

Emergency medical services — liability protection for physician or nurse serving as off-line medical director, 50-6-317.

Do not resuscitate orders, health care professionals' withholding of life-sustaining procedures pursuant to — immunity, 50-10-102.

Public authorities exempt for improper or unauthorized installations of utilities or underground facilities by others, 69-4-507.

Liability for death or injury to railroad employees, 69-14-1006.

Solid waste disposal in violation of law — absolute liability, 75-10-212.

Immunity of volunteer fire company or department and employees for hazardous or deleterious substance cleanup, 75-10-725.

**27-1-701. Liability for negligence as well as willful acts.** Except as otherwise provided by law, each person is responsible not only for the results of the person's willful acts but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person except so far as the person has willfully or by want of ordinary care brought the injury upon the person.

**History: En. Sec. 2296, Civ. C. 1895; re-en. Sec. 5077, Rev. C. 1907; re-en. Sec. 7579, R.C.M. 1921; Cal. Civ. C. Sec. 1714; Based on Field Civ. C. Sec. 853; re-en. Sec. 7579, R.C.M. 1935; R.C.M. 1947, 58-607; amd. Sec. 9, Ch. 12, L. 1979; amd. Sec. 2, Ch. 209, L. 1987; amd. Sec. 2, Ch. 397, L. 1987; amd. Sec. 2, Ch. 437, L. 1987; amd. Sec. 7, Ch. 440, L. 1987; amd. Sec. 2, Ch. 508, L. 1987; amd. Sec. 3, Ch. 516, L. 1987; amd. Sec. 583, Ch. 56, L. 2009.**

**Cross-References**

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-655.

Disputable presumptions, 26-1-602.

General duty of care, 28-1-201.

Liability for trade secret violations, 30-14-403, 30-14-404.

Liability of fellow employee for intentional and malicious acts or omissions, 39-71-413.

Bailment — liability for damage from wrongful use, 70-6-202.

Innkeepers — no liability without negligence, 70-6-502.

Liability for damage to property by oil and gas developer, 82-10-505.

Limitations on liability of irrigation districts, 85-7-2212.

**27-1-702.** *(Temporary)* **Comparative negligence — extent to which contributory negligence bars recovery in action for damages.** Contributory negligence does not bar recovery in an action by a person or the person's legal representative to recover damages for negligence resulting in death or injury to the person or property if the contributory negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed must be diminished in the proportion to the percentage of negligence attributable to the person recovering. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)*

**27-1-702.** *(Effective on occurrence of contingency)* **Comparative fault — extent to which contributory fault bars recovery in action for damages.** Contributory fault does not bar recovery in an action by a person or a person's legal representative to recover tort damages for death of a person or injury to a person or property if the contributory fault was not greater than the fault of the defendant or the combined fault of all defendants and nonparties, but damages allowed must be diminished in proportion to the percentage of fault attributable to the person recovering.

**History:** En. 58-607.1 by Sec. 1, Ch. 60, L. 1975; R.C.M. 1947, 58-607.1; amd. Sec. 1, Ch. 505, L. 1987; amd. Sec. 2, Ch. 293, L. 1997; amd. Sec. 4, Ch. 429, L. 1997.

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997 as Ch. 293) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**Cross-References**

Scaffolds — liability of employer for negligence, 50-77-101.

Liability for death or injury to railroad employees — damages diminished by contributory negligence, 69-14-1006.

Remedial action upon release of hazardous substance — liability, 75-10-715.

**27-1-703.** *(Temporary)* **Multiple defendants — determination of liability.** (1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of persons released from liability by the claimant and persons with whom the claimant has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, strict liability as provided in 27-1-719(1), or on a breach of warranty, including but not limited to the provisions of 30-2-314, 30-2-315, or 30-11-215, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or whom the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of persons released from liability by the claimant or with whom the claimant has settled. A finding of negligence of a person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that person for purposes of a prior or subsequent action involving that person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

(e) A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person whom the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person whom the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

(f) A defendant alleging that a settled or released person is at fault in the matter shall affirmatively plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

(iii) giving the claimant a reasonable opportunity to defend against the defense.

(g) If a defendant alleges that a settled or released person is at fault in the matter, the defendant shall notify each person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each settled or released person at the person's last-known address by certified mail, return receipt requested. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)*

**27-1-703.** *(Effective on occurrence of contingency)* **Multiple defendants — determination of liability.** Each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

**History: En. 58-607.2 by Sec. 1, Ch. 433, L. 1977; R.C.M. 1947, 58-607.2; amd. Sec. 1, Ch. 523, L. 1981; amd. Sec. 2, Ch. 505, L. 1987; amd. Sec. 1, Ch. 330, L. 1995; amd. Sec. 3, Ch. 293, L. 1997; amd. Sec. 5, Ch. 429, L. 1997; amd. Sec. 1, Ch. 436, L. 2023.**

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**Cross-References**

Several defendants not united in interest, 25-10-106.

Nonliability of employer insured under Workers' Compensation Act, 39-71-411.

**27-1-704. Release — covenant not to sue.** A release or covenant not to sue given to one of two or more persons liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides otherwise;

(2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of fault attributed by the trier of fact under 27-1-703 to the tortfeasor to whom the release or covenant is given;

(3) discharges the tortfeasor to whom it is given from all liability for contribution.

**History: En. Sec. 1, Ch. 293, L. 1997; amd. Sec. 63, Ch. 51, L. 1999.**

**27-1-705.** *(Effective on occurrence of contingency)* **Several liability — purpose — pleading — determination — nonparties.** (1) The purpose of 27-1-703 and this section is to substitute several liability for the former law providing for joint and several liability, except for certain actions. The purpose of several liability is to allocate responsibility based on fault to all parties to an occurrence, rather than only to the parties to the litigation, and to ensure that the liability of each party to an occurrence is allocated in direct proportion to that party's fault.

(2) In an action brought as a result of the death of a person or injury to a person or property, the liability of a defendant is several only and is not joint, except as provided in subsection (7). A defendant is liable only for that percentage of damages that is equal to the ratio of defendant's fault to the total fault attributed to all persons involved in the occurrence from which the action arose, including claimants, defendants, and persons not party to the action. A separate judgment must be entered against the defendant for that amount.

(3) In determining the percentage of fault of persons who are parties to the action, the trier of fact shall consider the fault of persons not a party to the action, based upon evidence of those persons' fault, that is admissible in evidence. Assessment of fault against a nonparty does not subject the nonparty to liability in the action or any other action and may not be introduced as evidence of liability in any other action.

(4) The percentage of fault attributable to parties to the action may total less than 100% if the trier of fact finds that fault contributing to cause the claimant's loss is attributable to other persons.

(5) The jury shall return a special verdict, or the judge shall make special findings in the absence of a jury, determining the percentage of fault attributable to each party and determining the total amount of damages sustained by the claimant.

(6) A defendant shall affirmatively plead comparative fault and identify in the answer or within a reasonable amount of time after filing the answer as determined by the court, each person who the defendant alleges is at fault with respect to the occurrence that is the basis for the action. A defendant who pleads the comparative fault of another has the burden of proving the fault.

(7) Section 27-1-703 applies and this section does not apply to an action arising from an act or omission that violates a state environmental law relating to hazardous or deleterious substances.

(8) Parties whose liability arises from acts or omissions in concert or from acts or omissions arising from an agency or employment relationship must be apportioned a single percentage of fault and must be treated as a single party for purposes of this section.

(9) For purposes of this section, "fault" means an act or omission that proximately caused or contributed to injury or damages sustained by a person seeking recovery and includes negligence in any of its degrees, contributory negligence, strict liability, and products liability.

**History: En. Sec. 1, Ch. 429, L. 1997.**

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**27-1-706.** *(Effective on occurrence of contingency)* **Effect of a release or covenant not to sue.** A release or covenant not to sue given to one of two or more persons potentially liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any of the other persons from liability for the person's several pro rata share of liability unless the terms of the release or covenant provide for a discharge of liability;

(2) reduces the aggregate claim against the other persons to the extent of any percentage of fault found by the trier of fact under 27-1-705 to be attributable to the person to whom the release or covenant was given; and

(3) discharges the person to whom it was given from all liability for contribution.

**History: En. Sec. 2, Ch. 429, L. 1997.**

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**27-1-707 reserved.**

**27-1-708. Liability of landowner to trespasser.** (1) Except as provided in subsection (2):

(a) a landowner owes a trespasser no duty of care with respect to the condition of the property;

(b) a trespasser enters or remains on the trespassed property without any assurance that the property is safe for any purpose.

(2) (a) A landowner may be liable to a trespasser for an injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(b) This section does not affect any immunities from or defense to civil liability established by another section of the Montana Code Annotated or available at common law to which a landowner may be entitled.

(3) As used in this section, the following definitions apply:

(a) "Landowner" means a person or private entity, including a landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, and person or entities in control of the property or with an agreement to use or occupy the property.

(b) "Property" means privately owned real property of any kind. The term includes any improvements, buildings, structures, machinery, and equipment on the property.

**History: En. Sec. 1, Ch. 306, L. 2021.**

**27-1-709. Property owner's immunity from damage caused by use of property unlawfully taken.** (1) The owner or possessor of personal property that is stolen is not liable in the absence of gross negligence for injury or damage arising out of the use of the property while the property is possessed by another. The owner of real property that is criminally misused by another without the owner's knowledge is not liable in the absence of gross negligence for injury or damage arising out of the misuse. This section includes property taken by theft, robbery, or burglary directly from the person's body or from a place of residence, tent or other recreational structure, or motor vehicle or boat that is owned, possessed, or used by the person owning or possessing the property.

(2) This section does not modify, amend, or eliminate the doctrines of negligence per se or attractive nuisance.

**History: En. Sec. 1, Ch. 400, L. 1997.**

**27-1-710. Civil liability for injuries involving alcohol consumption.** (1) The purpose of this section is to set statutory criteria governing the civil liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in this section, a person or entity that furnishes alcoholic beverages may not be found civilly liable under any other statute, theory of recovery, or common law claim for injury or damages arising from an event involving the person who was served or who consumed the beverage.

(3) A person or entity furnishing an alcoholic beverage may not be found civilly liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a licensing status under Title 16 or a provision or violation of a provision of Title 16.

(4) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated when furnished the alcoholic beverage; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

(5) In determining the cause of injuries or damages inflicted on another by the consumer of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:

(a) the consumption of the alcoholic beverage;

(b) the actions of the consumer;

(c) the negligence of the person allegedly harmed by the consumer;

(d) the visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and

(e) independent intervening cause or multiple causes.

(6) Because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability under subsection (4)(b), a jury or trier of fact may not consider:

(a) a hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

(b) an actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

(c) the signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;

(d) the conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or

(e) whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.

(7) A civil action may not be brought pursuant to subsection (4) by:

(a) a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent; or

(b) the consumer or by the consumer's estate, legal guardian, or dependent unless:

(i) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was underage; or

(ii) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.

(8) A civil action may not be commenced under this section against a person or entity who furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file the action to the person or entity who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.

(9) Notice made pursuant to subsection (8) must include the date, time, and circumstances of the event involving the consumer along with the alleged visual or audible indicators of visible intoxication observed by the furnishing party prior to service to the consumer. The person providing the notice must have a reasonable basis in law and fact that an exception described in subsections (4)(a) through (4)(c) has occurred before sending the notice.

(10) In any civil action brought pursuant to this section, the total liability for noneconomic damages for all claimants may not exceed $250,000 for each event.

(11) In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed $250,000. Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria in 27-1-221.

(12) Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section.

**History: En. Sec. 1, Ch. 1, Sp. L. March 1986; amd. Sec. 2, Ch. 448, L. 1989; amd. Sec. 1, Ch. 489, L. 2003; amd. Sec. 1, Ch. 321, L. 2023.**

**Cross-References**

Alcoholic beverage defined, 16-1-106.

Unlawfully selling or giving alcoholic beverage to minor or person under the influence, 16-3-301, 45-5-622, 45-5-623.

Innkeepers — civil liability, 70-6-513.

**27-1-711. Liability of minor or person of unsound mind for own torts — exemplary damages.** A minor or person of unsound mind is civilly liable for a wrong done by that person but is not liable in exemplary damages unless at the time of the act the person was capable of knowing that it was wrongful.

**History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113; amd. Sec. 584, Ch. 56, L. 2009.**

**Cross-References**

When exemplary damages allowed, 27-1-221.

Destruction of property by minor — liability of parents, 40-6-237.

Liability of parent or guardian for minor's damage to public accommodation, 70-6-514.

**27-1-712. Liability for damages for deceit.** (1) One who willfully deceives another with intent to induce that person to alter the person's position to the person's injury or risk is liable for any damage that the person suffers.

(2) A deceit, within the meaning of subsection (1), is either:

(a) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(b) the assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true;

(c) the suppression of a fact by one who is bound to disclose it or who gives information of other facts that are likely to mislead for want of communication of that fact; or

(d) a promise made without any intention of performing it.

(3) One who practices a deceit with intent to defraud the public or a particular class of persons is considered to have intended to defraud every individual in that class who is actually misled by the deceit.

**History: (1)En. Sec. 2291, Civ. C. 1895; re-en. Sec. 5072, Rev. C. 1907; re-en. Sec. 7574, R.C.M. 1921; Cal. Civ. C. Sec. 1709; Field Civ. C. Sec. 848; re-en. Sec. 7574, R.C.M. 1935; Sec. 58-602, R.C.M. 1947; (2)En. Sec. 2292, Civ. C. 1895; re-en. Sec. 5073, Rev. C. 1907; re-en. Sec. 7575, R.C.M. 1921; Cal. Civ. C. Sec. 1710; Field Civ. C. Sec. 849; re-en. Sec. 7575, R.C.M. 1935; Sec. 58-603, R.C.M. 1947; (3)En. Sec. 2293, Civ. C. 1895; re-en. Sec. 5074, Rev. C. 1907; re-en. Sec. 7576, R.C.M. 1921; Cal. Civ. C. Sec. 1711; Field Civ. C. Sec. 850; re-en. Sec. 7576, R.C.M. 1935; Sec. 58-604, R.C.M. 1947; R.C.M. 1947, 58-602, 58-603, 58-604; amd. Sec. 585, Ch. 56, L. 2009.**

**Cross-References**

Actual and constructive fraud, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

**27-1-713. Duty to restore thing wrongfully acquired or retained.** One who obtains a thing without the consent of its owner, by a consent later rescinded, or by an unlawful exaction that the owner could not at the time prudently refuse shall restore the thing to the person from whom it was obtained unless the person has acquired a title to the thing superior to that of the other person or unless the transaction was corrupt and unlawful on both sides. The restoration required by this section must be made without demand except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until the party has notice of the mistake.

**History: Ap. p. Sec. 2294, Civ. C. 1895; re-en. Sec. 5075, Rev. C. 1907; re-en. Sec. 7577, R.C.M. 1921; Cal. Civ. C. Sec. 1712; Field Civ. C. Sec. 851; re-en. Sec. 7577, R.C.M. 1935; Sec. 58-605, R.C.M. 1947; Ap. p. Sec. 2295, Civ. C. 1895; re-en. Sec. 5076, Rev. C. 1907; re-en. Sec. 7578, R.C.M. 1921; Cal. Civ. C. Sec. 1713; Field Civ. C. Sec. 852; re-en. Sec. 7578, R.C.M. 1935; Sec. 58-606, R.C.M. 1947; R.C.M. 1947, 58-605, 58-606; amd. Sec. 586, Ch. 56, L. 2009.**

**27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency.** (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, any search and rescue volunteer, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering the emergency care or assistance.

(2) Subsection (1) includes:

(a) a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for the volunteer services does not exceed 25% of the person's gross annual income or $3,000 a calendar year, whichever is greater. Reimbursement for search and rescue expenses is not compensation for purposes of this section.

(b) a member of the army national guard or air national guard acting in an official capacity.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, the refusal does not constitute gross negligence or a willful or wanton act or omission.

**History: En. Sec. 1, Ch. 93, L. 1963; R.C.M. 1947, 17-410; amd. Sec. 1, Ch. 390, L. 1979; amd. Sec. 1, Ch. 330, L. 1985; amd. Sec. 1, Ch. 133, L. 1987; amd. Sec. 587, Ch. 56, L. 2009; amd. Sec. 1, Ch. 103, L. 2017; amd. Sec. 1, Ch. 241, L. 2023.**

**Cross-References**

Limits on liability of health care provider in emergency situations, 27-1-734.

**27-1-715. Liability of owner of vicious dog.** (1) The owner of a dog that without provocation bites a person or service animal while the person or service animal is on or in a public place or lawfully on or in a private place located within an incorporated city or town is liable for damages that may be suffered by the person or service animal bitten, regardless of the former viciousness of the dog or the owner's knowledge of the viciousness.

(2) A person or service animal is lawfully in a private place within the meaning of this section when the person or service animal is on the property in the performance of any duty imposed on the person or service animal by the laws of this state or by the laws or postal regulations of the United States of America or when the person or service animal is on the property as an invitee or licensee of the person lawfully in possession of the property.

**History: En. Sec. 1, Ch. 113, L. 1943; R.C.M. 1947, 17-409; amd. Sec. 588, Ch. 56, L. 2009; amd. Sec. 6, Ch. 568, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 568, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Vicious dog control, 7-23-2109.

**27-1-716. Immunity of persons donating food for free distribution.** (1) As used in this section, the following definitions apply:

(a) "Canned food" means any food that has been commercially processed and prepared for human consumption.

(b) "Donor" means any processor, distributor, wholesaler, or retailer of perishable or canned foods or farmer or individual who donates food for free distribution.

(c) "Gleaner" means a person who harvests for free distribution perishable food that has been donated by the owner.

(d) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. Perishable food includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruit and vegetables, grains, and foods that have been refrigerated or frozen.

(2) Notwithstanding any other provision of law:

(a) a good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution or a gleaner of perishable food, apparently fit for human consumption, for free distribution is not subject to any criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by gross negligence or intentional misconduct of the donor or gleaner;

(b) a bona fide charitable or nonprofit organization that in good faith receives food, apparently fit for human consumption, and distributes it at no charge is not subject to any criminal penalty or civil damages resulting from the condition of the food unless an injury is caused by gross negligence or intentional misconduct of the organization.

(3) Immunity under this section extends to the good faith donation of canned or perishable foods that, while apparently fit for human consumption, are not readily marketable due to

appearance, grade, surplus, or other considerations, as well as to those foods that are readily marketable.

(4) If the ultimate distributor charges any fee for the food received from a donor or gleaner, such fact shall not deprive the donor or gleaner of the immunity provided under this section.

(5) This section does not restrict the authority of any lawful agency to inspect, regulate, or ban the use of donated food for human consumption.

**History:** **En. Sec. 1, Ch. 259, L. 1981.**

**27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment — civil liability — statute of limitations.** (1) A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee's assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee's assignee for a service charge in an amount not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of $100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than $500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3). The statute of limitations for the liability created under this section is 6 years from the date of the demand under subsection (2).

(7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section.

**History: En. Secs. 1, 2, Ch. 611, L. 1983; amd. Sec. 1, Ch. 557, L. 1985; amd. Sec. 229, Ch. 410, L. 1991; amd. Sec. 47, Ch. 10, L. 1993; amd. Sec. 1, Ch. 304, L. 1995; amd. Sec. 12, Ch. 515, L. 2001; amd. Sec. 6, Ch. 510, L. 2003; amd. Sec. 6, Ch. 392, L. 2005; amd. Sec. 1, Ch. 48, L. 2011.**

**27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the taker's own use without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of $100 or the retail value of the goods, not to exceed $1,000. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the minor's own use without having paid the purchase price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of $100 or the retail value of the goods, not to exceed $1,000. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

(5) For purposes of this section, the term "emancipated minor" means a person under 18 years of age who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor.

**History: En. Sec. 1, Ch. 506, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 739, L. 1991; amd. Sec. 79, Ch. 546, L. 1995; amd. Sec. 133, Ch. 42, L. 1997; amd. Sec. 3, Ch. 135, L. 1997; amd. Sec. 1, Ch. 397, L. 1999.**

**Cross-References**

Photographs of items allegedly taken or converted — admissibility procedure, 26-1-608.

Criminal offense of theft, 45-6-301.

**27-1-719.** *(Temporary)* **Liability of seller of product for physical harm to user or consumer.** (1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The provisions of subsection (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(3) (a) Subsection (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection (1)(b) does not apply to a claim for relief based on improper product design.

(4) A seller named as a defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it;

(b) the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

(5) The affirmative defenses referred to in subsection (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence set forth in 27-1-702.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997; subsection (3)(a) terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**27-1-719.** *(Effective on occurrence of contingency)* **Liability of seller of product for physical harm to user or consumer.** (1) A person who sells a product in a defective condition that is unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to the user's or consumer's property if:

(a) the seller is engaged in the business of selling the product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The provisions of subsection (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(3) (a) Subsection (1) does not apply to product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601, which are governed by 27-1-1602.

(b) Subsection (1)(b) does not apply to a claim for relief based upon improper product design.

(4) A seller named as a defendant in an action based on strict liability in tort for damages to a person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the claimant, user, or consumer of the product discovered the defect or the defect was open and obvious and the claimant, user, or consumer unreasonably made use of the product and was injured by it;

(b) the product was unreasonably misused by the user or consumer and the misuse caused or contributed to the injury. Unreasonable misuse of the product includes use of the product in a manner that contravenes an express warning or instruction appearing on, accompanying, or attached to the product or on its original container or wrapping, if the user or consumer knew or with the exercise of reasonable and diligent care should have known of the instructions or warnings.

(c) the claimant's contributory negligence or fault, regardless of the legal basis;

(d) the negligence or fault, regardless of the legal basis, of any party to a product liability action;

(e) the negligence or fault, regardless of the legal basis, of any person or entity with whom the claimant has settled or whom the claimant has released from liability as provided in 27-1-703(6).

(5) The affirmative defenses referred to in subsection (4) mitigate or bar recovery and must be applied in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705.

(6) A seller named as a defendant in a product liability action may assert the following affirmative defenses against the claimant, user, or consumer, the legal representative of the claimant, user, or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the plans or design for the product at issue or the methods and techniques of manufacturing, inspecting, testing, and labeling the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold to a user or consumer; or

(b) the product liability action was not commenced within 10 years of the date on which the product was first sold or leased to any person or otherwise placed into the stream of commerce, unless:

(i) the seller against whom the product liability action is brought knowingly concealed a defective or unsafe condition in the product that is the subject of the action or has knowingly concealed negligence in the product's construction, manufacture, or assembly, and if the matter so concealed directly resulted in the economic loss, personal injury, property damage, or wrongful death for which the action is brought;

(ii) the product is subject to a government-mandated product recall related to consumer safety, provided that the action must be limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;

(iii) the product liability action is brought with respect to a product that is real property or an improvement to real property;

(iv) the product liability action alleges that the product has a defective condition that is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years, and the seller against whom the product liability action is brought is also the manufacturer of the product claimed to be defective; or

(v) the seller or the person who first placed the product that is the subject of the product liability action in the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is greater than 10 years, in which event any product liability action that is otherwise within this section and is not barred by any other provision of law must be brought no later than 2 years following the expiration of that period certain.

(7) In a product liability action, it is rebuttably presumed that the product that caused the injury, death, or property damage was not in a defective condition that is unreasonably dangerous and that the manufacturer or seller of the product was not negligent. The jury must be informed of this presumption if at the time the product was first sold or leased to any person or otherwise placed into the stream of commerce:

(a) the product at issue's formula, design, labeling, warning, or instructions complied with mandatory safety statutes, standards, or regulations adopted by the federal or state government or an agency of the federal or state government that were applicable to the product at issue at the time of its manufacture and that addressed the product risk that allegedly caused harm;

(b) the product at issue was subject to premarket licensing or approval by the federal or state government or an agency of the federal or state government, the seller complied with all of the government's or agency's procedures and requirements pertaining to premarketing licensing or approval, and the product was approved or licensed for sale by the government or agency; or

(c) the product at issue:

(i) was a drug or medical device;

(ii) was approved for safety and efficacy by the United States food and drug administration;

(iii) was in compliance, in addition to its labeling, with the United States food and drug administration's approval at the time the product at issue left the control of the seller; and

(iv) was not sold in the United States after the effective date of any order of the United States food and drug administration to remove the product at issue from the market or to withdraw its approval.

(8) A product liability action may not be commenced or maintained against a seller who is not also a manufacturer unless the claimant proves by a preponderance of evidence that:

(a) the seller actually exercised substantial control over some aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, warnings, and instructions of the product that was a proximate cause of the damages for which the claimant seeks recovery;

(b) the seller altered, modified, or installed the product after it left the manufacturer's possession, and the alteration, modification, or installation was not authorized or requested by the manufacturer, was not performed in compliance with the directions or specifications of the manufacturer, and was a direct cause of the damages for which the claimant seeks recovery;

(c) the seller failed to exercise reasonable care with regard to the assembly, maintenance, service, or repair of the product at issue or in conveying to the claimant the manufacturer's labels, warnings, or instructions, and this failure was a proximate cause of the damages for which the claimant seeks recovery;

(d) the seller made an express factual representation regarding the product independent of any express warranty made by a manufacturer regarding the product, the product failed to conform to the seller's independent express warranty, the claimant relied on the express factual representation, and the failure of the product to conform to the seller's independent express warranty was a proximate cause of the damages for which the claimant seeks recovery;

(e) the manufacturer cannot be identified, despite a good-faith exercise of due diligence to identify the manufacturer of the product;

(f) personal jurisdiction over the manufacturer cannot be obtained in the state;

(g) the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the assets of the manufacturer's bankruptcy estate; or

(h) the seller had actual knowledge that the product contained a defect at the time the seller placed the product into the stream of commerce, and that known defect was a proximate cause of the damages for which the claimant seeks recovery.

(9) As used in this section:

(a) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant. When the action seeks to recover damages to or for a person who has died, the term includes the decedent as well as the party or parties bringing the action seeking relief.

(b) "Manufacturer" means a person, corporation, or other legal entity that is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part of a product and who places the product or any component part of the product in the stream of commerce.

(c) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(d) "Seller" means a manufacturer, wholesaler, or retailer. *(Subsection (3)(a) terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 1, Ch. 466, L. 1987; amd. Sec. 6, Ch. 429, L. 1997; amd. Sec. 589, Ch. 56, L. 2009; amd. Sec. 9, Ch. 2, L. 2021; amd. Sec. 2, Ch. 436, L. 2023.**

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**27-1-720. Liability — defect in design of firearms or ammunition.** (1) In a products liability action, no firearm, ammunition component that was manufactured in Montana, or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged.

(2) For purposes of this section:

(a) the potential of a firearm or ammunition to cause serious injury, damage, or death when discharged does not make the product defective in design; and

(b) injuries or damages resulting from the discharge of a firearm or ammunition are not proximately caused by its potential to cause serious injury, damage, or death but are proximately caused by the actual discharge of the product.

(3) The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.

**History: En. Sec. 1, Ch. 359, L. 1987; amd. Sec. 9, Ch. 440, L. 2015.**

**Cross-References**

Observance of right to keep and bear arms, 1-1-224.

Official observance of Montana's hunting heritage, 1-1-226.

**27-1-721. Immunity of certain firearms and hunter safety or hunter education instructors.** A person who is designated as a hunter safety instructor or hunter education instructor by the department of fish, wildlife, and parks under 87-2-105 or certified as an instructor by a national firearms association, who trains people in the lawful use of firearms, and who is not employed by a governmental entity is not liable for the conduct, acts, or omissions of a student handling firearms unless the instructor exhibits gross negligence giving rise to causation of the damages.

**History: En. Sec. 1, Ch. 415, L. 1995; amd. Sec. 1, Ch. 499, L. 1999.**

**27-1-722. Civil damages immunity for injury caused by legal use of force.** (1) A use of force allowable under the provisions of Title 45, chapter 3, part 1, provides immunity to the person using the force from civil damages for injury to any person or property arising from injury to the person, or damage to the property of the person, against whom the force was used.

(2) Conviction of a crime committed by the person who was injured or whose property was damaged by the use of force is not a prerequisite to a defense under subsection (1), but it is evidence that the act or omission to which the use of force was a response occurred.

(3) The reasonableness of the use of force must be determined in light of the circumstances at the time that the force was used.

(4) The prevailing party in an action in which a defense is asserted under this section is entitled to costs and reasonable attorney fees.

**History: En. Sec. 1, Ch. 445, L. 2001.**

**27-1-723. Prohibition on lawsuit — criminal actions.** A person who is harmed while attempting to engage in, engaging in, or fleeing after having engaged in conduct that is classified as a felony offense may not recover damages from a crime victim or other person that used reasonable self-defense to protect a crime victim.

**History: En. Sec. 1, Ch. 485, L. 2023.**

**27-1-724. Limits on liability of livestock owner or property owner in accidents involving motor vehicles and livestock.** (1) Except as provided in Title 60, chapter 7, part 2, for the highways referred to in 60-7-201, a person owning, controlling, or in possession of livestock or a person owning property has no duty to keep livestock from wandering on highways and is not subject to liability for damages to any property or for injury to a person caused by an accident involving a motor vehicle and livestock unless the owner of the livestock or property was grossly negligent or engaged in intentional misconduct.

(2) As used in this section, the following definitions apply:

(a) "Highway" has the meaning provided in 60-1-103(17);

(b) "Livestock" has the meaning provided in 15-1-101; and

(c) "Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, or association.

**History: En. Sec. 1, Ch. 28, L. 2001; amd. Sec. 4, Ch. 299, L. 2019.**

**27-1-725. Purpose.** The purpose of 27-1-725 through 27-1-727 is to assist courts and juries in defining the circumstances under which persons responsible for equines may be found liable for damages to persons harmed in the course of equine activities. It is the policy of the state of Montana that a person is not liable for damages sustained by another solely as a result of risks inherent in equine activities if those risks are or should be reasonably obvious, expected, or necessary to persons engaged in equine activities. It is the policy of the state of Montana that an equine activity sponsor or equine professional who is negligent and causes foreseeable injury to a participant bears responsibility for that injury in accordance with other applicable law.

**History: En. Sec. 1, Ch. 119, L. 1993.**

**27-1-726. Definitions.** As used in 27-1-725 through 27-1-727, the following definitions apply:

(1) "Engage in an equine activity" means to ride, train, drive, or be a passenger upon an equine, whether mounted or unmounted, or to assist a participant, equine activity sponsor, or equine professional. The phrase does not mean activity by a spectator at an equine activity, unless the spectator is improperly in an unauthorized area in immediate proximity to an equine activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, or parades that involve any breed of equines and any of the equine disciplines, including but not limited to dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;

(b) equine training or teaching activities;

(c) boarding equines;

(d) riding, inspecting, grooming, or evaluating an equine belonging to another, whether or not the owner has received monetary consideration or another thing of value for the use of the equine or permits a prospective purchaser of the equine to ride, inspect, groom, or evaluate the equine;

(e) rides, trips, hunts, pack trips, or other equine activities of any type, however informal, that are sponsored by an equine activity sponsor; and

(f) providing veterinarian or farrier services.

(4) "Equine activity sponsor" means an individual, group, club, partnership, corporation, or other entity, whether operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for an equine activity. The phrase includes but is not limited to pony clubs; 4-H clubs; hunt clubs; riding clubs; riding classes and programs; therapeutic riding programs; operators, instructors, and promoters of equine facilities; stables; clubhouses; pony ride strings; farms; ranches; and arenas.

(5) "Equine professional" means a person engaged for compensation in:

(a) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine;

(b) selling or renting equipment or tack to a participant; or

(c) providing veterinary or farrier services.

(6) "Participant" means a person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

(7) "Risks inherent in equine activities" means dangers or conditions that are an integral part of equine activities, including but not limited to:

(a) the propensity of an equine to behave in ways that may result in injury or harm to or the death of persons on or around the equine;

(b) the unpredictability of an equine's reaction to such things as medication; sounds; sudden movement; and unfamiliar objects, persons, or other animals;

(c) hazards, such as surface and subsurface ground conditions;

(d) collisions with other equines or objects; or

(e) the potential of another participant to not maintain control over the equine or to not act within the person's ability.

**History: En. Sec. 2, Ch. 119, L. 1993.**

**27-1-727. Equine activity liability limitations — waivers.** (1) Except as provided in subsections (2) through (4), an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant engaged in an equine activity resulting from risks inherent in equine activities.

(2) An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others and to be aware of risks inherent in equine activities.

(3) Subsection (1) does not apply:

(a) if the equine activity sponsor or the equine professional:

(i) provided the equipment or tack and the equipment or tack caused the injury because the equine activity sponsor or equine professional failed to reasonably and prudently inspect or maintain the equipment;

(ii) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely engage in the equine activity and the participant's ability to safely manage the particular equine based on the participant's representations as to the participant's ability;

(iii) owned, leased, rented, or otherwise was in lawful possession and control of the land or facilities upon which the participant sustained injuries caused by a dangerous latent condition that was known or should have been known to the equine activity sponsor or the equine professional;

(iv) committed an act or omission that constituted willful or wanton disregard for the safety of the participant and the act or omission caused the injury; or

(v) intentionally injured the participant; or

(b) in a products liability action.

(4) (a) Any waiver or release for equine activities must:

(i) state known inherent risks of equine activities; and

(ii) contain the following statement in bold typeface:

**"By signing this document, you may be waiving your legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in equine activities or for any injuries or damages you may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care."**

(b) Any waiver or release for equine activities may still be challenged on any legal grounds.

(c) Any waiver or release for equine activities that is in compliance with this section is not prohibited by or subject to the provisions of 28-2-702.

**History: En. Sec. 3, Ch. 119, L. 1993; amd. Sec. 1, Ch. 720, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 720, L. 2025. Amendment effective October 1, 2025.

**27-1-728. Mule and horseracing — exception.** Sections 27-1-725 through 27-1-727 do not apply to the horseracing and mule racing industry as regulated in Title 23, chapter 4.

**History: En. Sec. 4, Ch. 119, L. 1993.**

**27-1-729 and 27-1-730 reserved.**

**27-1-731. Individual immunity for and indemnification of ditch company employees — definitions.** (1) As used in this section:

(a) "ditch company" means a private, not-for-profit irrigation ditch or water user cooperative, corporation, association, or organization;

(b) "employee" means a director, officer, or employee of a ditch company.

(2) An employee of a ditch company is not individually liable for actions and omissions within the course and scope of the employee's employment or position, except as provided in subsection (6). The immunity granted by this subsection does not apply to the liability of a not-for-profit cooperative, corporation, association, or organization.

(3) Upon receiving service of a summons and complaint in an action against the employee, the employee shall give written notice to the employee's supervisor requesting that a defense to the action be provided by the ditch company. If the employee does not have a supervisor, the employee shall give notice of the action to the attorney of the ditch company defending legal actions of that type. Except as provided in subsection (6), the ditch company shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the ditch company. The ditch company shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the ditch company refuses or is unable to provide a direct defense, the employee may retain other counsel. Except as provided in subsection (6), the ditch company shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may otherwise be payable under this section.

(4) The employee must be indemnified by the ditch company for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a ditch company is a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In an action against a ditch company, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the ditch company acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) The employee may not be defended or indemnified by the ditch company for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If a judicial determination has not been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in the action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection.

**History: En. Sec. 1, Ch. 397, L. 1987; amd. Sec. 590, Ch. 56, L. 2009.**

**27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers.** (1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended; or

(b) a corporation or organization that is eligible for or has been granted tax-exempt status by the department of revenue under the provisions of 15-31-102.

**History: En. Sec. 1, Ch. 437, L. 1987; amd. Sec. 4, Ch. 357, L. 1995; amd. Sec. 69, Ch. 114, L. 2003; amd. Sec. 3, Ch. 63, L. 2015.**

**Cross-References**

Accounting review committees — limitation for persons serving on or nonprofit corporations performing as, 37-50-403.

**27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events.** (1) A nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is not liable for injuries suffered by a contestant as a result of the contestant's voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) the minor has provided written consent to participate in the event; and

(b) the consent is approved by one of the minor's parents or by the minor's legal guardian.

**History: En. Sec. 1, Ch. 508, L. 1987; amd. Sec. 591, Ch. 56, L. 2009.**

**27-1-734. Limits on liability of health care provider in emergency situations.** A physician licensed under Title 37, chapter 3, a nurse licensed under Title 37, chapter 8, or a hospital licensed under Title 50, chapter 5, rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is liable for civil damages for acts or omissions committed in providing such emergency obstetrical care or assistance only to the extent that those damages are caused by gross negligence or by willful or wanton acts or omissions.

**History: En. Sec. 4, Ch. 493, L. 1989; amd. Sec. 24, Ch. 550, L. 1991.**

**Cross-References**

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

**27-1-735. Emergency communications systems — lawful release of information.** (1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers, subscribers' names and physical addresses, and phone location information pursuant to 10-4-118.

(2) A local exchange telephone company registered as a Montana telecommunications service provider, as provided in 69-3-805, or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d)(1), that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused by the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct. This subsection does not provide immunity from liability in a products liability action.

(3) For the purposes of this section, "subscribers" means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider.

**History: En. Sec. 1, Ch. 452, L. 1991; amd. Sec. 1, Ch. 242, L. 1999; amd. Sec. 2, Ch. 374, L. 2021.**

**27-1-736. Limits on liability of medical practitioner or dental hygienist who provides services without compensation.** (1) A medical practitioner, as defined in 37-2-101, or a dental hygienist licensed under Title 37, chapter 4, who renders, at any site, any health care within the scope of the provider's license, voluntarily and without compensation, to a patient of a clinic, to a patient referred by a clinic, or in a community-based program to provide access to health care services for uninsured persons is not liable to a person for civil damages resulting from the rendering of the care unless the damages were the result of gross negligence or willful or wanton acts or omissions by the medical practitioner or dental hygienist. Each patient must be given notice that under state law the medical practitioner or dental hygienist cannot be held legally liable for ordinary negligence if the medical practitioner or dental hygienist does not have malpractice insurance.

(2) A physician participating in the Montana health corps act provided for in Title 37, chapter 3, part 8, is immune from liability as provided in 37-3-806.

(3) For purposes of this section:

(a) "clinic" means a place for the provision of health care to patients that is organized for the delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;

(b) "community-based program to provide access to health care services for uninsured persons" means a local program in which care is provided without compensation to individuals who have been referred through that community-based program and in which the medical practitioner or dental hygienist has entered into a written agreement to provide the service;

(c) "health care" has the meaning provided in 50-16-504;

(d) "without compensation" means that the medical practitioner or dental hygienist voluntarily rendered health care without receiving any reimbursement or compensation, except for reimbursement for supplies.

(4) Subsection (1) applies only to a medical practitioner or dental hygienist who:

(a) does not have malpractice insurance coverage because the medical practitioner or dental hygienist is retired or is otherwise not engaged in active practice; or

(b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for services provided under this section.

**History: En. Sec. 1, Ch. 359, L. 1997; amd. Sec. 1, Ch. 406, L. 1999; amd. Sec. 1, Ch. 157, L. 2009; amd. Sec. 1, Ch. 705, L. 2023.**

**27-1-737. Repealed.** Sec. 1, Ch. 463, L. 2003.

**History: En. Sec. 1, Ch. 573, L. 1999.**

**27-1-738. Health care provider's responsibility for others.** For purposes of a malpractice claim, as defined in 27-6-103, a health care provider, as defined in 27-6-103, is not liable for an act or omission by a person or entity that was not an employee or agent of or otherwise under the control of the health care provider at the time that the act or omission occurred. This section does not absolve a health care provider from liability under 27-1-703.

**History: En. Sec. 1, Ch. 43, L. 2005.**

**27-1-739. Liability of health care provider for reduced chance of recovery caused by malpractice.** (1) For purposes of a malpractice claim, as defined in 27-6-103, damages may be awarded against a health care provider, as defined in 27-6-103, if a negligent act or omission during diagnosis or treatment for a medical condition reduces a patient's chance of recovering and the negligent act or omission is a contributing cause of:

(a) death;

(b) survival for a shorter period of time;

(c) no recovery;

(d) a recovery that is of lesser extent or quality or that takes longer to occur; or

(e) other injury.

(2) The damages must be determined based on which of the events referred to in subsections (1)(a) through (1)(e) occurred and the resulting types of injury, damage, and loss.

(3) (a) If the evidence establishes that the chance of recovering prior to the negligent act or omission was more likely than not, the damages awarded must be 100% of the damages determined under subsection (2).

(b) If the evidence establishes that the chance of recovering prior to the negligent act or omission was not more likely than not, the damages awarded must be the difference between the chance of recovering prior to the negligent act or omission and the chance of recovering after the negligent act or omission multiplied by the total damages determined under subsection (2).

**History:** En. Sec. 1, Ch. 229, L. 2005.

**27-1-740. Ridesharing — limits on employer liability.** (1) Except as provided in subsection (2), an employer is not liable for injuries or damages sustained by operators, passengers, or other persons:

(a) that result from operation of a motor vehicle that is being used in a voluntary ridesharing arrangement between a place of residence and a place of employment or near those places; or

(b) because the employer provides information to, provides incentives to, or otherwise encourages employees to participate in voluntary ridesharing arrangements.

(2) This section does not apply to:

(a) motor vehicles owned, leased, or otherwise provided by an employer;

(b) an employer that reimburses an employee for mileage or travel expenses, other than parking, for participation in a ridesharing arrangement;

(c) an employer that makes employee participation in ridesharing programs a requirement of employment;

(d) acts by an employee within the scope of employment; or

(e) voluntary ridesharing arrangements subsidized by an employer.

(3) For purposes of this section:

(a) "employment" commences when an employee arrives at the employer's place of employment to report for work and terminates when the employee leaves the employer's place of employment; and

(b) "within the scope of employment" means activity when the employee is engaged in the performance of duties assigned or directed by the employer or is acting in the furtherance of the business of the employer.

**History:** En. Sec. 1, Ch. 385, L. 1999.

**27-1-741. Purpose.** The legislature finds that:

(1) amusement rides are used by a large number of Montana's citizens and attract a large number of nonresidents, significantly contributing to Montana's tourism industry and tax base;

(2) the safety of the public using amusement rides is an important matter of public policy;

(3) there are inherent risks associated with the machinery, equipment, or animals that are impracticable or impossible for an amusement ride owner or operator to eliminate with all reasonable safety precautions;

(4) an informed patron is in the best position to avoid risks inherent to amusement rides; and

(5) the safety of amusement rides will be greatly improved at minimal cost if operators maintain minimum safety standards and riders are subject to minimum safety standards for their own protection and the protection of others.

**History: En. Sec. 1, Ch. 370, L. 1999; amd. Sec. 2, Ch. 156, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 156, L. 2025. Amendment effective October 1, 2025.

**27-1-742. Definitions.** As used in 27-1-741 through 27-1-745 [and 27-1-749], the following definitions apply:

(1) (a) "Amusement ride" or "ride" means a movable, portable, or nonpermanent structure that features or employs a mechanical, aquatic, or other device or attraction that carries passengers over a fixed or restricted route or that operates in a fixed or restricted area, primarily for the passengers' amusement.

(b) This definition does not apply to amusement rides that are set up and operate in any location in Montana for not more than 30 days.

(2) "Operator" means a person, business, or other entity that owns, leases, manages, or operates amusement rides.

(3) "Passenger" means a person:

(a) waiting in the immediate vicinity of an amusement ride to board the ride;

(b) entering or boarding an amusement ride;

(c) using an amusement ride;

(d) getting off or exiting from an amusement ride; or

(e) leaving the immediate vicinity of an amusement ride after getting off or exiting the ride.

(4) "Qualified inspector" means an individual who is not employed by the operator and is:

(a) a professional engineer; or

(b) an inspector holding a minimum of:

(i) a level 1 maintenance certification from AIMS international, also known as amusement industry manufacturers and suppliers international; or

(ii) a level 1 certification from the national association of amusement ride safety officials.

(5) "Serious injury or illness" means an injury to or illness of a person that results in death, dismemberment, significant disfigurement, the permanent loss of the use of a body organ, member, function, or system, a compound fracture, or any other significant injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician.

**History: En. Sec. 2, Ch. 370, L. 1999; amd. Sec. 3, Ch. 156, L. 2025.**

**Compiler's Comments**

*2025 Amendment — Code Commissioner Correction:* See 2025 Session Law for amendment made by sec. 3, Ch. 156, L. 2025. Amendment effective October 1, 2025.

In the introductory clause, the Code Commissioner inserted the bracketed reference to 27-1-749 to correct an apparent error and ensure that the definitions in this section apply to 27-1-749.

**27-1-743. Operator's responsibilities.** An operator shall:

(1) exercise reasonable care in constructing, erecting, maintaining, operating, and supervising amusement rides to ensure the safety of passengers;

(2) ensure that there is an adequately staffed first-aid station and a location for reporting injuries and accidents. For the purposes of this section, one adequately staffed first-aid station and a single location for reporting injuries and accidents on a site where multiple operators are grouped in a fair or carnival formation are sufficient.

(3) ensure that when supervising or operating a ride, the operator or an employee of the operator is not under the influence of alcohol or drugs;

(4) post in a conspicuous place on the amusement ride grounds an easily readable sign that lists the passenger and operator responsibilities and prohibitions contained in 27-1-744 and this section, as well as additional language or another sign near the entrance to each ride that includes:

(a) operational instructions, if any;

(b) safety guidelines for the ride, if any;

(c) restrictions on the use of the amusement ride, if any;

(d) behavior or activities that are prohibited, if any; and

(e) the following statement: "State law requires riders and passengers to obey all warnings and directions for this ride and behave in a manner that will not cause or contribute to injury to themselves or others. Riders must report injuries before leaving the premises."

(5) conduct a daily pre-opening inspection of all amusement rides, in accordance with the pre-opening inspection requirements of ASTM F770-22 and ASTM F1193-22, section 6; and

(6) maintain liability insurance on the operation of the ride with an insurer authorized or approved to write this type of insurance in the state. The insurance must provide coverage, exclusive of daily interest and costs, of at least $500,000 for bodily injury or death of one person in each occurrence and at least $1 million for bodily injury or death of two or more persons in each occurrence.

**History: En. Sec. 3, Ch. 370, L. 1999; amd. Sec. 4, Ch. 156, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 156, L. 2025. Amendment effective October 1, 2025.

**27-1-744. Passenger responsibilities and prohibitions.** (1) A passenger may not:

(a) enter or exit an amusement ride except at a time and place, if any, designated by an operator or employee and in the manner and under the supervision of an operator or employee;

(b) throw, drop, or expel an object from or toward an amusement ride;

(c) fail or refuse to comply with instructions from an operator or employee of an amusement ride or from posted signs, including but not limited to warning signs, instructions signs, and direction signs;

(d) act in any manner that could cause or contribute to injury to self or others or that could interfere with the safe operation of an amusement ride;

(e) disable, disconnect, or attempt to disable any safety or restraining device, except at the express instruction of an operator;

(f) alter or enhance the designed speed, course, or direction of an amusement ride;

(g) operate or attempt to operate amusement ride controls designed to be operated only by the operator or employee operating the ride;

(h) extend arms or legs beyond the carrier or seating area, except at the express direction of an operator or employee;

(i) fail to properly use all safety equipment on the amusement ride in accordance with the instructions of operators and posted signs; or

(j) use an amusement ride when under the influence of alcohol or any other intoxicating substance. An operator or employee may prohibit a person from using or continuing a ride if the operator or employee reasonably believes that the person's ability to safely use or continue the ride is diminished.

(2) A passenger shall:

(a) follow warnings and other information posted by or orally given to the passenger by an operator or employee; and

(b) obey all posted signs pertaining to the amusement ride, including but not limited to warning signs, instruction signs, and directions signs.

(3) A passenger who violates the provisions of this section is subject to immediate removal from the amusement facility without a refund of any portion of the admission charge.

**History: En. Sec. 4, Ch. 370, L. 1999; amd. Sec. 5, Ch. 156, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 156, L. 2025. Amendment effective October 1, 2025.

**27-1-745. Injury reports and investigations.** (1) (a) A passenger who is injured on or by an amusement ride is encouraged to report the injury to the operator before leaving the amusement ride premises. The passenger shall, if possible, not later than 6 months after the injury, report the injury to the operator or to the owner of the premises where the amusement ride was located at the time of the injury. The report must include:

(i) the passenger's name, address, and telephone number;

(ii) a brief description of the injury and how it occurred, including the date, approximate time, location, and amusement ride on which the injury occurred; and

(iii) the names, addresses, and telephone numbers of known witnesses to the injury.

(b) The operator shall provide to the person who was injured and who has filed an injury report:

(i) the individual operator's name, current address, and telephone number;

(ii) a brief description of the ride, the maintenance schedule for the ride, and the manufacturer of the ride;

(iii) the names, current addresses, and telephone numbers of all known witnesses to the injury; and

(iv) a copy of the most recent inspection certificate as required by 27-1-749 and the inspector's name, current address, and telephone number.

(2) The report must be kept by the operator for at least 3 years after its receipt and must be made available for inspection by the injured passenger or the passenger's agent during business hours.

(3) (a) In the event of a serious injury or illness reported pursuant to subsection (1), the operator shall initiate an investigation conducted by a qualified inspector. The amusement ride may not be reopened to the public until the investigation is complete and the qualified inspector determines the ride to be safe for public use.

(b) The cost of an investigation resulting from the serious injury or illness must be paid by the operator.

(c) If the qualified inspector determines that the serious injury or illness was caused by the rider's failure to comply with the posted safety rules or with instructions given by the ride operators, the investigation must be concluded.

**History: En. Sec. 5, Ch. 370, L. 1999; amd. Sec. 6, Ch. 156, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 156, L. 2025. Amendment effective October 1, 2025.

**27-1-746. Duty of health care provider performing third-party medical examination.** A health care provider who is retained by a third party to perform a medical examination and advises the examinee about a medical condition during or after the examination has an obligation to exercise ordinary care to ensure that the advice complies with the standard of care for the health care provider's profession, but has no duty to discover the presence of an unrelated medical condition. The health care provider has an obligation to inform the examinee of likely diagnoses that the health care provider reasonably considers. A health care provider who provides actual medical care or treatment incident to a third-party medical examination shall exercise the standard of care that the health care provider would have exercised if the examinee had retained the health care provider. For purposes of this section, "health care provider" has the meaning provided in 27-6-103.

**History: En. Sec. 1, Ch. 246, L. 2005.**

**27-1-747. Claims and damages based on birth of child prohibited.** (1) A cause of action or award of damages is prohibited if the cause of action or award of damages is based on the claim that, but for the conduct of a health care provider, a parent would not have permitted the parent's child to have been born.

(2) For the purposes of this section, the term "health care provider" means a health care facility as defined in 50-5-101 or a physician, physician assistant, registered nurse, advanced practice registered nurse, or direct-entry midwife licensed under Title 37.

(3) This section does not apply to instances of gross negligence or willful or wanton acts or omissions.

**History: En. Sec. 1, Ch. 311, L. 2013.**

**27-1-748. Limitation of liability — firearm hold agreement — definition.** (1) No cause of action may arise against an individual or a private entity for returning a firearm to the firearm owner at the termination of a firearm hold agreement.

(2) The immunity provided in subsection (1) does not apply to an action arising from a firearm hold agreement if the action was the result of otherwise unlawful conduct on the part of the individual or private entity holding a firearm for another individual.

(3) As used in this section, "firearm hold agreement" means a written or oral agreement between a firearm owner and another individual or a private entity in which the other individual or private entity takes physical possession of the firearm owner's lawfully possessed firearm at

the owner's request, holds the firearm for an agreed period of time, and returns the firearm to the owner according to the terms of the agreement.

**History:** **En. Sec. 1, Ch. 414, L. 2023.**

**27-1-749. Inspections and inspection certification — qualified inspectors — fees.** (1) All amusement rides must be inspected by a qualified inspector at least once every 12 months, measured from the date the previous inspection certificate was issued.

(2) An amusement ride may not be operated for the public if a qualified inspector has not issued an inspection certificate. A qualified inspector who determines that a ride is unsafe for public use shall immediately notify the operator of the unsafe condition. A qualified inspector may not issue an inspection certificate for the ride until the unsafe condition has been corrected to the satisfaction of the qualified inspector.

(3) Before a passenger may be admitted to an amusement ride that has undergone a major modification, the ride must be inspected by a qualified inspector.

(4) After completing a satisfactory inspection, a qualified inspector shall issue an inspection certificate to the operator of the amusement ride certifying that the ride is safe for public use. The certificate must show compliance with one or both of the following standards, as adopted by ASTM international:

(a) ASTM F770-22, also known as the Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices;

(b) ASTM F2376-22, also known as the Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems.

(5) An inspection certificate issued by a qualified inspector pursuant to the laws of a foreign jurisdiction under standards substantially equivalent to the standards of this state must satisfy the requirements of subsection (1).

(6) Fees for annual inspections must be determined by the qualified inspector and paid by the operator of the amusement ride.

**History:** **En. Sec. 1, Ch. 156, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**27-1-750 reserved.**

**27-1-751. Short title.** Sections 27-1-751 through 27-1-754 may be cited as the "Montana Recreation Responsibility Act".

**History:** **En. Sec. 1, Ch. 331, L. 2009.**

**27-1-752. Definitions.** As used in 27-1-751 through 27-1-754, the following definitions apply:

(1) "Agritourism" means a form of commercial enterprise that links agricultural production or agricultural processing with tourism in order to attract visitors to a farm, ranch, or other agricultural business for purposes of entertaining or educating the visitors.

(2) "Inherent risks" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of any sport or recreational activity and that cannot be prevented by the use of reasonable care.

(3) "Provider" means a person, corporation, partnership, or other business entity, including a governmental entity as defined in 2-9-111, that promotes, offers, or conducts a sport or recreational opportunity for profit or otherwise.

(4) "Sport or recreational opportunity" means any sporting activity, whether undertaken with or without permission, including but not limited to baseball, softball, football, soccer, basketball, bicycling, hiking, swimming, boating, hockey, dude ranching, nordic or alpine skiing, snow boarding, snow sliding, mountain climbing, river floating, whitewater rafting, canoeing, kayaking, target shooting, hunting, fishing, backcountry trips, horseback riding and other equine activity, snowmobiling, off-highway vehicle use, agritourism, an on-farm educational opportunity, and any similar recreational activity.

**History:** **En. Sec. 2, Ch. 331, L. 2009; amd. Sec. 1, Ch. 137, L. 2017.**

**27-1-753. Limitation on liability in sport or recreational opportunity.** (1) A person who participates in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for all injury or death to the person and for all damage to the person's property that result from the inherent risks in that sport or recreational opportunity.

(2) A provider is not required to eliminate, alter, or control the inherent risks within the particular sport or recreational opportunity that is provided.

(3) (a) Sections 27-1-751 through 27-1-754 do not preclude an action based on the negligence of the provider if the injury, death, or damage is not the result of an inherent risk of the sport or recreational opportunity.

(b) This section does not prohibit a written waiver or release entered into prior to engaging in a sport or recreational opportunity for damages or injuries resulting from conduct that constitutes ordinary negligence or for risks that are inherent in the sport or recreational opportunity.

(c) Any waiver or release for a sport or recreational opportunity must:

(i) state known inherent risks of the sport or recreational opportunity; and

(ii) contain the following statement in bold typeface: By signing this document you may be waiving your legal right to a jury trial to hold the provider legally responsible for any injuries or damages resulting from risks inherent in the sport or recreational opportunity or for any injuries or damages you may suffer due to the provider's ordinary negligence that are the result of the provider's failure to exercise reasonable care.

(d) Any waiver or release for a sport or recreational opportunity may still be challenged on any legal grounds.

(e) Any waiver or release for a sport or recreational opportunity executed in compliance with this section is not prohibited by or subject to the provisions of 28-2-702.

(4) Sections 27-1-751 through 27-1-754 do not apply to a cause of action based on the design, manufacture, provision, or maintenance of sports or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational activity.

**History: En. Sec. 3, Ch. 331, L. 2009; amd. Sec. 1, Ch. 410, L. 2015.**

**Cross-References**

Protection of youth — requirements related to concussion, 20-7-1301 through 20-7-1304.

**27-1-754. Recreational activity — applicability exceptions.** Sections 27-1-751 through 27-1-753 do not apply to duties, responsibilities, liability, or immunity related to:

(1) recreational use of waters or land, as provided in 23-2-321;

(2) snowmobiling, as provided in 23-2-653 and 23-2-654;

(3) skiing, as provided in Title 23, chapter 2, part 7;

(4) off-highway vehicle operation, as provided in 23-2-822;

(5) instruction in firearms and hunter safety or hunter education, as provided in 27-1-721;

(6) equine activity, as provided in 27-1-727;

(7) sponsored rodeo and similar events, as provided in 27-1-733;

(8) amusement rides, as provided in 27-1-743 and 27-1-744;

(9) recreational use of land, as provided in 23-2-907, 70-16-302, 77-1-805, 87-1-265, and 87-1-286;

(10) wildcrafting, as provided in 76-10-106; and

(11) placement of a sign or marker warning of a hazard in water legally accessible to the public, as provided in 87-1-287.

**History: En. Sec. 4, Ch. 331, L. 2009; amd. Sec. 1, Ch. 63, L. 2019.**

**27-1-755. Civil action — human trafficking victim.** (1) A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under 45-5-702, 45-5-703, 45-5-705, 45-5-706, or 45-5-711 for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney fees and costs.

(3) An action under this section must be commenced not later than 10 years after the later of:

(a) the date on which the victim no longer was subject to human trafficking; or

(b) the date on which the victim reached 18 years of age.

(4) This section does not preclude any other remedy available to the victim under federal or state law.

(5) For the purposes of this section, the term "human trafficking" has the meaning provided in 45-5-701.

**History: En. Sec. 11, Ch. 285, L. 2015; amd. Sec. 2, Ch. 167, L. 2023.**

**27-1-756 through 27-1-759 reserved.**

**27-1-760. Medical malpractice — duty of care — foreseeability of risks.** In medical malpractice actions, the foreseeability of risks or of a specific risk does not change or heighten the duty owed beyond the reasonable standard of care applicable to the medical provider.

**History: En. Sec. 1, Ch. 263, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 3, Ch. 263, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

*Applicability:* Section 4, Ch. 263, L. 2025, provided: "[This act] applies to medical malpractice actions filed on or after [the effective date of this act] and is intended to clarify any court ruling to the contrary." Effective May 1, 2025.

## Part 8
## Libel and Slander

**Part Cross-References**

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

**27-1-801. Defamation — how effected.** Defamation is effected by:

(1) libel;

(2) slander.

**History: En. Sec. 31, Civ. C. 1895; re-en. Sec. 3601, Rev. C. 1907; re-en. Sec. 5689, R.C.M. 1921; Cal. Civ. C. Sec. 44; Field Civ. C. Sec. 28; re-en. Sec. 5689, R.C.M. 1935; R.C.M. 1947, 64-202.**

**Cross-References**

Criminal defamation, 45-8-212.

**27-1-802. Libel defined.** Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation that exposes any person to hatred, contempt, ridicule, or obloquy or causes a person to be shunned or avoided or that has a tendency to injure a person in the person's occupation.

**History: En. Sec. 32, Civ. C. 1895; re-en. Sec. 3602, Rev. C. 1907; re-en. Sec. 5690, R.C.M. 1921; Cal. Civ. C. Sec. 45; Field Civ. C. 29; re-en. Sec. 5690, R.C.M. 1935; R.C.M. 1947, 64-203; amd. Sec. 592, Ch. 56, L. 2009.**

**27-1-803. Slander defined.** Slander is a false and unprivileged publication other than libel that:

(1) charges any person with crime or with having been indicted, convicted, or punished for crime;

(2) imputes in a person the present existence of an infectious, contagious, or loathsome disease;

(3) tends directly to injure a person in respect to the person's office, profession, trade, or business, either by imputing to the person general disqualification in those respects that the office or other occupation peculiarly requires or by imputing something with reference to the person's office, profession, trade, or business that has a natural tendency to lessen its profit;

(4) imputes to a person impotence or want of chastity; or

(5) by natural consequence causes actual damage.

**History: En. Sec. 33, Civ. C. 1895; re-en. Sec. 3603, Rev. C. 1907; re-en. Sec. 5691, R.C.M. 1921; Cal. Civ. C. Sec. 46; Field Civ. C. Sec. 30; re-en. Sec. 5691, R.C.M. 1935; R.C.M. 1947, 64-204; amd. Sec. 593, Ch. 56, L. 2009.**

**27-1-804. What communications are privileged.** A privileged publication is one made:

(1) in the proper discharge of an official duty;

(2) in any legislative or judicial proceeding or in any other official proceeding authorized by law;

(3) in a communication without malice to a person interested therein by one who is also interested or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent or who is requested by the person interested to give the information;

(4) by a fair and true report without malice of a judicial, legislative, or other public official proceeding or of anything said in the course thereof.

**History: En. Sec. 34, Civ. C. 1895; re-en. Sec. 3604, Rev. C. 1907; re-en. Sec. 5692, R.C.M. 1921; Cal. Civ. C. Sec. 47; Based on Field Civ. C. Sec. 31; re-en. Sec. 5692, R.C.M. 1935; R.C.M. 1947, 64-208.**

**27-1-805 through 27-1-810 reserved.**

**27-1-811. When owner of radio station not liable for material broadcast.** No person, firm, or corporation owning or operating a radio broadcasting station is liable under the law of defamation on account of having made its broadcasting facilities available to any person, including but not limited to a candidate for public office, for discussion of controversial or other subjects in the absence of proof of actual malice on the part of such owner or operator.

**History: En. Sec. 1, Ch. 122, L. 1939; R.C.M. 1947, 64-205; amd. Sec. 10, Ch. 12, L. 1979.**

**27-1-812. Right of owner to require prior submission of text to be broadcast.** Any person, firm, or corporation owning or operating a radio broadcasting station shall have the right but shall not be compelled to require the submission and permanent filing in such station of a copy of the complete address or other form of expression, if in words, intended to be broadcast over such station, not more than 48 hours before the time of the intended broadcast thereof.

**History: En. Sec. 2, Ch. 122, L. 1939; R.C.M. 1947, 64-206.**

**27-1-813. Liability of person broadcasting — liability of owner for broadcast prepared by station.** Nothing in 27-1-811 or 27-1-812 may be construed to relieve any person broadcasting over a radio station from liability under the law of defamation or to relieve any person, firm, or corporation owning or operating a radio broadcasting station from liability under the law of defamation on account of any broadcast prepared or made by a person, firm, or corporation or by any officer or employee of a radio station in the course of employment. Whenever an owner or operator of a radio station is liable on account of a broadcast and two or more broadcasting stations were connected simultaneously or by transcription, film, metal tape, or other approved or adapted use for joint operation in the making of the broadcast, liability is limited solely to the person, firm, or corporation owning or operating the radio station that originated the broadcast.

**History: En. Sec. 3, Ch. 122, L. 1939; R.C.M. 1947, 64-207; amd. Sec. 11, Ch. 12, L. 1979; amd. Sec. 594, Ch. 56, L. 2009.**

**27-1-814. Repealed.** Sec. 62, Ch. 12, L. 1979.

**History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1(part).**

**27-1-815. Repealed.** Sec. 62, Ch. 12, L. 1979.

**History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1(part).**

**27-1-816. Repealed.** Sec. 62, Ch. 12, L. 1979.

**History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1(part).**

**27-1-817. Repealed.** Sec. 62, Ch. 12, L. 1979.

**History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971; R.C.M. 1947, 64-207.1(part).**

**27-1-818. Media management to be given opportunity to publish correction prior to action for libel or slander.** In order to claim punitive damages because of any defamatory publication in or broadcast on any newspaper, magazine, periodical, radio or television station, or cable television system, the defamed person shall first give those alleged to be responsible or liable for the publication or broadcast a reasonable opportunity to correct the defamatory matter. Such opportunity shall be given by notice in writing specifying the article or broadcast and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty.

**History: En. Sec. 1, Ch. 569, L. 1979.**

**27-1-819. What constitutes a reasonable time for correction.** The first issue of a newspaper, magazine, or periodical published after the expiration of 1 week from the receipt of the notice provided for in 27-1-818 is within a reasonable time for correction. In the case of radio and television stations and cable television systems, a broadcast made at the same time of day as the broadcast complained of and of at least equal duration which is made within 7 days following receipt of such notice is within a reasonable time for correction.

**History: En. Sec. 2, Ch. 569, L. 1979.**

**27-1-820. Content of correction.** To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction constitutes a correction;

otherwise the publication or broadcast of the defamed person's statement of the true facts or so much of the statement that is not defamatory of another, scurrilous, or otherwise improper for publication or broadcast, published or broadcast as the defamed person's statement, constitutes a correction within the meaning of 27-1-818 through 27-1-821.

**History:** **En. Sec. 3, Ch. 569, L. 1979; amd. Sec. 595, Ch. 56, L. 2009.**

**27-1-821. Extent to which a correction is a defense upon trial.** If it appears upon trial that the publication or broadcast complained of was made under honest mistake, then a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration constitutes a defense against the recovery of punitive damages.

**History:** **En. Sec. 4, Ch. 569, L. 1979.**

## Parts 9 and 10 reserved

## Part 11
## Liability of Mental Health Professionals

**Part Cross-References**

Periodic payment of damages — medical malpractice damage limitations, Title 25, ch. 9, part 4.
Statutes of limitations — actions for medical malpractice, 27-2-205.
Montana Medical Legal Panel Act, Title 27, ch. 6.
Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.
Child abuse and neglect — duty to report, 41-3-201.
Child abuse and neglect — penalty for failure to report, 41-3-207.
Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, ch. 3, part 8.
Abuse or neglect of elderly or person with developmental disability — duty to report, 52-3-811.

**27-1-1101. Definition.** As used in this part, "mental health professional" means:

(1) a certified professional person as defined in 53-21-106;

(2) a physician licensed under Title 37, chapter 3;

(3) a psychologist licensed under Title 37, chapter 17;

(4) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(5) a clinical social worker, a professional counselor, or a marriage and family therapist licensed under Title 37, chapter 39.

**History:** **En. Sec. 1, Ch. 214, L. 1987; amd. Sec. 1, Ch. 310, L. 2001; amd. Sec. 17, Ch. 713, L. 2023; amd. Sec. 20, Ch. 53, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 20, Ch. 53, L. 2025. Amendment effective October 1, 2025.

**27-1-1102. Duty to warn of violent behavior.** A mental health professional has a duty to warn of or take reasonable precautions to provide protection from violent behavior only if the patient has communicated to the mental health professional an actual threat of physical violence by specific means against a clearly identified or reasonably identifiable victim. The duty is discharged by a mental health professional if the mental health professional has:

(1) made reasonable efforts to communicate the threat to the victim and notify the law enforcement agency closest to the patient's or the victim's residence of the threat of violence; and

(2) supplied a requesting law enforcement agency with any information the mental health professional has concerning the threat of violence.

**History:** **En. Sec. 2, Ch. 214, L. 1987; amd. Sec. 596, Ch. 56, L. 2009.**

**27-1-1103. Immunity from liability.** (1) No monetary liability and no cause of action may arise against any mental health professional for failing to predict, warn of, or take precautions to provide protection from a patient's threatened violent behavior unless the mental health professional has a duty to warn of violent behavior, as provided in 27-1-1102.

(2) No monetary liability and no cause of action may arise against any mental health professional for disclosing confidential or privileged information in an effort to discharge a duty arising under 27-1-1102.

**History:** **En. Sec. 3, Ch. 214, L. 1987; amd. Sec. 597, Ch. 56, L. 2009.**

## Parts 12 through 14 reserved

## Part 15

## Montana Anti-Intimidation Act

**27-1-1501. Short title.** This part may be cited as the "Montana Anti-Intimidation Act of 1996".

**History: En. Sec. 1, I.M. No. 123, Nov. 5, 1996.**

**27-1-1502. Findings — purpose.** (1) This part seeks to address the growing problem of harassing and threatening behavior being undertaken by extremist individuals and groups in Montana. Numerous public officials and their families, voters, juries, individuals, and organizations have been targeted for intimidation and harassment by extremists. One of the principal tools of intimidation used by extremists is a false lien filed upon the property of an individual or organization.

(2) The purpose of this part is to restrain these extremist activities by providing a civil remedy for anyone injured or harmed as a result of acts of intimidation, precluding the filing of false liens and establishing a procedure for removing an existing false lien.

**History: En. Sec. 2, I.M. No. 123, Nov. 5, 1996.**

**27-1-1503. Civil action.** (1) A public official, family member of a public official, juror, voter, individual, or organization that is injured, harmed, or otherwise aggrieved by the acts of another person in violation of 45-5-203, 45-7-102, or 45-7-209 has a civil cause of action against the person causing the harm.

(2) An individual or organization who is attempting to exercise a legally protected right and who is injured, harassed, or aggrieved by a threat or intimidation has a civil cause of action against the person engaging in the threatening or intimidating behavior.

(3) A conviction for violation of 45-5-203, 45-7-102, or 45-7-209 is not a condition precedent for a civil action under this section.

**History: En. Sec. 3, I.M. No. 123, Nov. 5, 1996.**

**27-1-1504 reserved.**

**27-1-1505. Liens.** (1) As used in this section, the following definitions apply:

(a) "Lien" means an encumbrance on property as security for the payment of a debt.

(b) "Nonconsensual common-law lien" means a lien that:

(i) is not provided for by a specific state or federal statute;

(ii) does not depend upon the consent of the owner of the property affected for its existence;

(iii) is not an equitable or constructive lien imposed by a court; and

(iv) is not of a type commonly used in legitimate commercial transactions.

(c) "Person" means an individual, group of individuals, or any organization of individuals.

(2) A person may not file a nonconsensual common-law lien upon the real or personal property of an individual or organization.

(3) (a) If a nonconsensual common-law lien is filed against the real or personal property of an individual or organization, the individual or organization may petition the district court in the county in which the affected property is located to remove the nonconsensual common-law lien. If the district court determines that the lien in question is a nonconsensual common-law lien, the district court shall enter an order directing the appropriate public official to remove the nonconsensual common-law lien.

(b) The legislature may provide other methods of removing nonconsensual common-law liens.

(4) The person filing the nonconsensual common-law lien is liable for the costs of removing the nonconsensual common-law lien, including reasonable attorney fees, court costs, and actual damages sustained by the aggrieved individual or organization as a result of the nonconsensual common-law lien.

**History: En. Sec. 4, I.M. No. 123, Nov. 5, 1996.**

## Part 16
## Covid-19 Liability

**27-1-1601.** *(Temporary)* **Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Covid-19" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it, and conditions associated with the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating from it.

(2) "Health care professional" means, for the purposes of this part, physicians, physician assistants, nurse practitioners, nurses, nursing assistants, chiropractors, pharmacists, pharmacy technicians, dentists, dental hygienists, optometrists, medication aides, respiratory therapist practitioners, professional counselors, occupational therapists, midwives, psychologists, and other health care practitioners who are licensed, certified, or otherwise authorized or permitted by the laws of this state to administer health care services in the ordinary course of business or in the practice of a profession, whether paid or unpaid. This term includes persons engaged in telehealth as defined in 33-22-138, and a similar professional's employer or agent who provides or arranges health care.

(3) "Health care provider" means and includes, for the purposes of this part, a health care professional, health care facility, home health care facility, assisted living facility, and any other person or facility otherwise authorized or permitted by any federal or state statute, regulation, order, or public health guidance to administer health care services or treatment.The term does not include a government entity or a health care professional that is employed by a government entity.

(4) "Person" means an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee, or any other legal or commercial entity. The term does not include a government entity.

(5) "Personal protective equipment" includes protective clothing, gloves, face shields, goggles, face masks, respirators, gowns, aprons, coveralls, and other equipment designed to protect the wearer from injury or spread of infection or illness.

(6) "Premises" includes any real property and any appurtenant building or structure, as well as any other location, vehicle, or place, serving a commercial, residential, educational, religious, governmental, cultural, charitable, or health care purpose.

(7) "Public health guidance" includes guidance related to covid-19 issued by the following:

(a) the centers for disease control and prevention of the U.S. department of health and human services;

(b) the centers for medicare and medicaid services of the U.S. department of health and human services;

(c) the federal occupational safety and health administration;

(d) the office of the governor;

(e) a state agency, including the department of public health and human services; or

(f) a local government, including a local government health department or local government board of health.

(8) "Qualified product" means and includes:

(a) personal protective equipment and supplies used to treat covid-19 or to prevent the spread of covid-19;

(b) medical devices, equipment, and supplies used to treat covid-19, including medical devices, equipment, and supplies that are used or modified for an unapproved use to treat covid-19 or to prevent the spread of covid-19;

(c) medical devices, equipment, and supplies used outside of their normal use to treat covid-19 or to prevent the spread of covid-19;

(d) medications used to treat covid-19, including medications prescribed or dispensed for off-label use to attempt to treat covid-19;

(e) tests to diagnose or determine immunity to covid-19; and

(f) a component of an item described in subsections (8)(a) through (8)(e). *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 1, Ch. 2, L. 2021.**

**27-1-1602.** *(Temporary)* **Liability.** Except as provided in 27-1-1603 through 27-1-1608, a person is not liable for civil damages for injuries or death from or relating to exposure or potential exposure to covid-19 unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History:** En. Sec. 2, Ch. 2, L. 2021.

**27-1-1603.** *(Temporary)* **Premises owner's duty of care — limited liability.** (1) A person who possesses or is in control of a premises, including a tenant, lessee, or occupant of a premises, who directly or indirectly invites or permits an individual onto a premises is not liable for civil damages for injuries or death sustained from the individual's exposure to covid-19, whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of a premises, unless the civil action involves an act or omission that constitutes gross negligence, willful and wanton misconduct, or intentional tort.

(2) The standard established in subsection (1) applies in landlord-tenant claims made under 70-24-303(1)(b) through (1)(e) for injuries or death sustained from an individual's exposure to covid-19. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History:** En. Sec. 3, Ch. 2, L. 2021.

**27-1-1604.** *(Temporary)* **Liability of health care providers.** A health care provider is not liable for civil damages for causing or contributing, directly or indirectly, to the death or injury of an individual as a result of the health care provider's acts or omissions while providing or arranging health care in support of the response to covid-19 unless the health care provider caused the death or injury of an individual through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort. This section applies to:

(1) injury or death resulting from screening, assessing, diagnosing, caring for, or treating individuals with a suspected or confirmed case of covid-19;

(2) prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient with a suspected or confirmed case of covid-19;

(3) acts or omissions while providing health care to individuals with a condition unrelated to covid-19 when those acts or omissions support the response to covid-19, including the following:

(a) delaying or canceling nonurgent or elective dental, medical, or surgical procedures or altering the diagnosis or treatment of an individual in response to a federal or state statute, regulation, order, or public health guidance;

(b) diagnosing or treating patients outside the normal scope of the health care provider's license or practice;

(c) using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;

(d) conducting tests or providing treatment to an individual outside the premises of a health care facility;

(e) acts or omissions undertaken by a health care provider because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to covid-19 that renders the health care provider unable to provide the level or manner of care to a person that otherwise would have been required in the absence of covid-19; or

(f) acts or omissions undertaken by a health care provider relating to the use or nonuse of personal protective equipment. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History:** En. Sec. 4, Ch. 2, L. 2021.

**27-1-1605.** *(Temporary)* **Supplies, equipment, and products designed, manufactured, labeled, sold, distributed, and donated in response to covid-19.** (1) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the design, manufacturing, labeling, selling, distributing, or donating of the household disinfecting or cleaning supplies, personal protective equipment, or a qualified product unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(2) A person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment, or a qualified product in response to covid-19 is not liable in a civil action alleging personal injury, death, or property damage caused by or resulting from a failure to provide proper instructions or sufficient warnings unless the person caused the personal injury, death, or property damage through an act or omission that constitutes gross negligence, willful and wanton misconduct, or an intentional tort.

(3) This section supersedes 27-1-719 for product liability claims brought for damages caused in part by covid-19 as defined in 27-1-1601. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 5, Ch. 2, L. 2021.**

**27-1-1606.** *(Temporary)* **Affirmative defense — reasonable measures consistent with regulations, orders, and public health guidance.** (1) In addition to all other defenses, a person may assert as an affirmative defense that the person took reasonable measures consistent with a federal or state statute, regulation, order, or public health guidance related to covid-19 that was applicable to the person or activity at issue at the time of the alleged injury, death, or property damage.

(2) If two or more sources of public health guidance are applicable, a person does not breach a duty of care if the person took reasonable measures consistent with one applicable set of public health guidance.

(3) If a person proves the affirmative defense contained in this section, the affirmative defense is a complete bar to any action relating to covid-19.

(4) This section may not be construed to impose liability on a person for failing to comply with a federal or state statute, regulation, order, or public health guidance related to covid-19. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 6, Ch. 2, L. 2021.**

**27-1-1607.** *(Temporary)* **Limitation on action.** A government order, regulation, or public health guidance related to covid-19 may not create and may not be construed to create a new cause of action against any person with respect to the matters contained in the government order, regulation, or public health guidance. *(Terminates January 1, 2031— sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 7, Ch. 2, L. 2021.**

**27-1-1608.** *(Temporary)* **Limitation on requirements.** (1) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of covid-19 to meet the standard of care.

(2) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires temperature checks, a person is not required to conduct temperature checks before allowing a person to enter a premises if an individual entering the premises refuses to allow a temperature check.

(3) If a federal or state statute, regulation, order, or public health guidance related to covid-19 recommends or requires a vaccine, an individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care. *(Terminates January 1, 2031—sec. 15, Ch. 2, L. 2021.)*

**History: En. Sec. 8, Ch. 2, L. 2021.**

# CHAPTER 2
# STATUTES OF LIMITATIONS

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## Part 1
## General Provisions

**27-2-101. Definition of action.** The word "action", as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

**History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720; amd. Sec. 12, Ch. 12, L. 1979.**

**27-2-102. When action commenced.** (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;

(b) an action is commenced when the complaint is filed.

(2) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

(4) Subsection (3) does not apply to actions involving the limitations contained in 27-2-205.

**History: En. Sec. 540, C. Civ. Proc. 1895; re-en. Sec. 6457, Rev. C. 1907; re-en. Sec. 9047, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 350; re-en. Sec. 9047, R.C.M. 1935; R.C.M. 1947, 93-2701; amd. Sec. 13, Ch. 12, L. 1979; amd. Sec. 1, Ch. 441, L. 1987.**

**27-2-103. Actions by state subject to limitations.** The limitations prescribed in part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties.

**History: En. Sec. 49, p. 50, L. 1877; re-en. Sec. 49, 1st Div. Rev. Stat. 1879; re-en. Sec. 49, 1st Div. Comp. Stat. 1887; re-en. Sec. 520, C. Civ. Proc. 1895; re-en. Sec. 6453, Rev. C. 1907; re-en. Sec. 9043, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 345; re-en. Sec. 9043, R.C.M. 1935; R.C.M. 1947, 93-2615; amd. Sec. 14, Ch. 12, L. 1979.**

**27-2-104. Application of this state's statutes of limitations — actions against nonresidents.** When a cause of action that does not involve the title to or possession of real property within the state accrues against a person who is not then a resident of the state, an action is governed by part 5 of this chapter.

**History: En. Sec. 556, C. Civ. Proc. 1895; re-en. Sec. 6473, Rev. C. 1907; re-en. Sec. 9063, R.C.M. 1921; re-en. Sec. 9063, R.C.M. 1935; R.C.M. 1947, 93-2717; amd. Sec. 8, Ch. 293, L. 1991.**

**27-2-105. Periods of limitation.** All civil actions must be commenced within the periods prescribed in part 2 except when another statute specifically provides a different limitation.

**History: En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; R.C.M. 1947, 93-2601; amd. Sec. 15, Ch. 12, L. 1979.**

**Cross-References**

Limitation on action against museum, 22-3-521.

Limitation on commencing action, 25-1-102.

## Part 2
## Time Limits on Specific Kinds of Actions

**27-2-201. Actions upon judgments.** (1) Except as provided in subsections (3) through (5), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 10 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

(4) The period prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

(5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid.

**History: Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev.**

**C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(1), 93-2604(2); amd. Sec. 5, Ch. 631, L. 1993; amd. Sec. 5, Ch. 60, L. 1995; amd. Sec. 39, Ch. 125, L. 1995; amd. Sec. 8, Ch. 264, L. 1995; amd. Sec. 1, Ch. 101, L. 1999; amd. Sec. 13, Ch. 515, L. 2001.**

**Cross-References**

Time limit for issuing execution, 25-13-101.

**27-2-202. Actions based on contract or other obligation.** (1) The period prescribed for the commencement of an action on any contract, covenant, obligation, or liability founded on an instrument in writing is within 6 years.

(2) The period prescribed for the commencement of an action on a contract, account, or promise not founded on an instrument in writing is within 5 years.

(3) The period prescribed for the commencement of an action on an obligation or liability, other than a contract, account, or promise, not founded on an instrument in writing is within 3 years.

**History: Ap. p. Sec. 1, p. 172, L. 1889; re-en. Sec. 512, C. Civ. Proc. 1895; re-en. Sec. 6445, Rev. C. 1907; re-en. Sec. 9029, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 337; re-en. Sec. 9029, R.C.M. 1935; Sec. 93-2603, R.C.M. 1947; Ap. p. Sec. 513, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 157, L. 1901; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6446, Rev. C. 1907; re-en. Sec. 9030, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9030, R.C.M. 1935; amd. Sec. 13, Ch. 263, L. 1975; Sec. 93-2604, R.C.M. 1947; Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2603, 93-2604(1), 93-2605(3); amd. Sec. 16, Ch. 12, L. 1979; amd. Sec. 2, Ch. 665, L. 2023 (revised May 3, 2024); amd. Sec. 1, Ch. 174, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 174, L. 2025. Amendment effective October 1, 2025.

*Applicability:* Section 3, Ch. 174, L. 2025, provided: "[This act] applies to actions to recover damages for any contract, covenant, obligation, or liability founded on an instrument in writing that are filed on or after October 1, 2025."

**Cross-References**

Contracts not written in plain language — limitation on remedies, 30-14-1112.

Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

Covenant enforcement and abandonment, 70-17-210.

**27-2-203. Actions for relief on ground of fraud or mistake.** The period prescribed for the commencement of an action for relief on the ground of fraud or mistake is within 2 years, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

**History: Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(4).**

**27-2-204.** *(Temporary)* **Tort actions — general and personal injury.** (1) Except as provided in 27-2-216, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case the period is within 10 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years.

**27-2-204.** *(Effective October 1, 2026)* **Tort actions — general and personal injury.** (1) Except as provided in 27-2-216 and 27-2-219, the period prescribed for the commencement of an action on a liability not founded on an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case the period is within 10 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years.

**History: (1)En. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; (2)En. Sec. 514, C. Civ.**

**Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; (3)En. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(2), (3), 93-2606(3); amd. Sec. 17, Ch. 12, L. 1979; amd. Sec. 1, Ch. 158, L. 1989; amd. Sec. 4, Ch. 560, L. 1993; amd. Sec. 1, Ch. 266, L. 2007; amd. Sec. 2, Ch. 367, L. 2019; amd. Sec. 4, Ch. 709, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 709, L. 2025. Amendment effective October 1, 2026.

**27-2-205.** *(Temporary)* **Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced practice registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsections (2) and (3), be commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission upon which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

(3) In an action brought for an injury described in 50-4-1405, the time limitation in subsection (1) is tolled until the plaintiff discovers both the injury and the causal relationship between the medical treatment and the injury.

**27-2-205.** *(Effective October 1, 2026)* **Actions for medical malpractice.** (1) Except as provided in 27-2-219, action in tort or contract for injury or death against a physician or surgeon, physician assistant, dentist, dental hygienist, registered nurse, advanced practice registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based on alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, must, except as provided in subsections (2) and (3), be commenced within 2 years after the date of injury or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may an action be commenced after 5 years from the date of injury. However, this time limitation is tolled for any period during which there has been a failure to disclose any act, error, or omission on which an action is based and that is known to the defendant or through the use of reasonable diligence subsequent to the act, error, or omission would have been known to the defendant.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of the minor's injury, the period of limitations in subsection (1) begins to run when the minor reaches the minor's eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian.

(3) In an action brought for an injury described in 50-4-1405, the time limitation in subsection (1) is tolled until the plaintiff discovers both the injury and the causal relationship between the medical treatment and the injury.

**History: En. Sec. 1, Ch. 328, L. 1971; amd. Sec. 1, Ch. 191, L. 1973; R.C.M. 1947, 93-2624; amd. Sec. 1, Ch. 499, L. 1987; amd. Sec. 38, Ch. 83, L. 1989; amd. Sec. 1, Ch. 16, L. 1995; amd. Sec. 21, Ch. 368, L. 2015; amd. Sec. 2, Ch. 318, L. 2021; amd. Sec. 2, Ch. 560, L. 2025; amd. Sec. 5, Ch. 709, L. 2025.**

**Compiler's Comments**

*2025 Amendments — Composite Section:* See 2025 Session Law for amendment made by sec. 2, Ch. 560, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 5, Ch. 709, L. 2025. Amendment effective October 1, 2026.

*Purported Repeal of Termination Provision:* Although sec. 2, Ch. 35, L. 2025, purported to repeal the termination of this section imposed by sec. 28, Ch. 368, L. 2015, and sec. 38, Ch. 415, L. 2019, the termination provision was previously removed by sec. 3, Ch. 318, L. 2021, and sec. 4, Ch. 318, L. 2021.

**Cross-References**

Periodic payment of damages — medical malpractice damage limitations, Title 25, ch. 9, part 4.

Liability of mental health professionals, Title 27, ch. 1, part 11.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Malpractice claims — tolling of statute of limitations, 27-6-702.

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

**27-2-206. Actions for legal malpractice.** An action against an attorney licensed to practice law in Montana or a paralegal assistant or a legal intern employed by an attorney based upon the person's alleged professional negligent act or for error or omission in the person's practice must be commenced within 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the act, error, or omission, whichever occurs last, but in no case may the action be commenced after 10 years from the date of the act, error, or omission.

**History: En. 93-2625 by Sec. 1, Ch. 220, L. 1977; R.C.M. 1947, 93-2625.**

**27-2-207. Injuries involving property.** Within 2 years is the period prescribed for the commencement of an action for:

(1) injury to or waste or trespass on real or personal property;

(2) taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

(3) killing or injuring stock by a railroad corporation or company.

**History: Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2607(part).**

**Cross-References**

Limitation on action against museum, 22-3-521.

Actions for waste, trespass, or injury committed during mining work or exploration, 27-2-303.

**27-2-208. Actions for damages arising out of work on improvements to real property or land surveying.** (1) Except as provided in 70-19-427(1) and subsections (2) and (3) of this section, an action to recover damages (other than an action on any contract, obligation, or liability founded on an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property or resulting from or arising out of land surveying of real property may not be commenced more than 6 years after completion of the improvement or land surveying.

(2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred during the sixth year after the completion of the improvement or land surveying may be commenced within 1 year after the occurrence of the injury.

(3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement or real property that is surveyed at the time a right of action arises.

(4) As used in this section:

(a) "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

(5) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action.

**History: En. Secs. 1, 2, 3, 4, 5, Ch. 60, L. 1971; R.C.M. 1947, 93-2619, 93-2620, 93-2621, 93-2622, 93-2623; amd. Sec. 1, Ch. 62, L. 1999; amd. Sec. 4, Ch. 412, L. 2003; amd. Sec. 2, Ch. 174, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 174, L. 2025. Amendment effective October 1, 2025.

*Applicability:* Section 3, Ch. 174, L. 2025, provided: "[This act] applies to actions to recover damages for any contract, covenant, obligation, or liability founded on an instrument in writing that are filed on or after October 1, 2025."

**Cross-References**

Professional land surveyor defined, 37-67-101.
Professional land surveyor — entry on land — trespass exception, 70-16-111.
Surveying — actions arising from, 70-28-113.

**27-2-209. Actions against local government or local government official.** (1) The period prescribed for the commencement of an action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in that person's official capacity and in virtue of that person's office or by the omission of an official duty, including the nonpayment of money collected upon an execution, is within 3 years, except that this subsection does not apply to an action for an escape.

(2) The period prescribed for the commencement of an action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process is within 1 year.

(3) Actions for claims against a county that have been rejected by the county commissioners must be commenced within 6 months after the first rejection.

(4) The period prescribed for the commencement of an action against a municipality for damages or injuries to property caused by a mob or riot is within 1 year.

(5) The period prescribed for the commencement of an action against a municipality arising from a decision of the municipality relating to a land use, construction, or development project is 6 months from the date of the written decision.

**History: Ap. p. Sec. 514, C. Civ. Proc. 1895; amd. Sec. 2, p. 157, L. 1901; amd. Sec. 2, Ch. 128, L. 1903; re-en. Sec. 6447, Rev. C. 1907; re-en. Sec. 9031, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 339; re-en. Sec. 9031, R.C.M. 1935; Sec. 93-2605, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2605(1), 93-2608(part), 93-2609(2); amd. Sec. 1, Ch. 412, L. 2005.**

**Cross-References**

Limitation of actions against state or political subdivision, 2-9-302.

**27-2-210. Actions arising from the seizure or sale of property for taxes.** (1) Within 1 year is the period prescribed for the commencement of an action against an officer or officer de facto:

(a) to recover any goods, wares, merchandise, or other property seized by the officer in the officer's official capacity as tax collector;

(b) to recover the price or value of any goods, wares, merchandise, or other personal property seized;

(c) for damages for the seizure, detention, or sale of or injury to any goods, wares, merchandise, or other personal property seized; or

(d) for damages done to any person or property in making a seizure.

(2) The period prescribed for the commencement of an action to recover stock sold for a delinquent assessment is within 6 months.

(3) (a) An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within 3 years after the commencement of commercial production of oil, gas, or other minerals from the land.

(b) Nothing contained in subsection (3)(a) changes the nature of a royalty interest prior to actual production. The purpose of subsection (3)(a) is to place a limitation on actions seeking royalty interests reserved by the county, once production has commenced, without in any way affecting the validity of any claims a county may have prior to the commencement of production.

**History: Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933;**

**re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2608(3), 93-2609(1); amd. Sec. 3, Ch. 458, L. 1985; (3)(b)En. Sec. 1, Ch. 458, L. 1985; amd. Sec. 598, Ch. 56, L. 2009.**

**Cross-References**

Tax liens, Title 15, ch. 17.

Ownership interests in land sold for taxes, Title 15, ch. 18.

**27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved or unless a support obligation has been entered, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. If a support obligation has been entered, an action must be brought within 10 years of the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

**History: Ap. p. Sec. 515, C. Civ. Proc. 1895; re-en. Sec. 6448, Rev. C. 1907; re-en. Sec. 9032, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9032, R.C.M. 1935; Sec. 93-2606, R.C.M. 1947; Ap. p. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; Sec. 93-2607, R.C.M. 1947; Ap. p. Sec. 516, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450, Rev. C. 1907; amd. Sec. 2, Ch. 47, L. 1917; re-en. Sec. 9034, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 340; re-en. Sec. 9034, R.C.M. 1935; Sec. 93-2608, R.C.M. 1947; Ap. p. Sec. 554, C. Civ. Proc. 1895; re-en. Sec. 6471, Rev. C. 1907; re-en. Sec. 9061, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 359; re-en. Sec. 9061, R.C.M. 1935; Sec. 93-2715, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2606(1), (2), 93-2607(1), 93-2608(part), 93-2715; amd. Sec. 18, Ch. 12, L. 1979; amd. Sec. 1, Ch. 190, L. 1981; amd. Sec. 6, Ch. 631, L. 1993; amd. Sec. 6, Ch. 60, L. 1995.**

**27-2-212. Actions arising from wrongful removal or exclusion from office.** Within 6 months is the period prescribed for the commencement of:

(1) any action for the restoration to office by any person wrongfully or illegally removed or excluded from office;

(2) any suit for the recovery of salary or other emoluments of office by any person having been wrongfully or illegally removed or excluded from office.

**History: Ap. p. Sec. 517, C. Civ. Proc. 1895; amd. Sec. 1, p. 144, L. 1899; re-en. Sec. 6450a, Rev. C. 1907; re-en. Sec. 9035, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 341, 342; amd. Sec. 1, Ch. 27, L. 1933; re-en. Sec. 9035, R.C.M. 1935; Sec. 93-2609, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2609(3), (4).**

**27-2-213. Actions against banks.** (1) Except as provided in subsection (2), there are no time limitations on the commencement of actions to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society.

(2) Any action to obtain, set aside, or question in any manner any stated or settled account between any bank, banker, trust company, or savings and loan corporation, association, or society and any depositor with the bank, banker, trust company, or savings and loan corporation, association, or society must be commenced within 5 years from the date of the statement of the account. Any action based upon or arising from the payment by any bank, banker, trust company, or savings and loan corporation, association, or society of a forged, raised, or otherwise

altered check, order, or promissory note out of the deposit, money, or property of the plaintiff must be commenced within 3 years from the day on which the plaintiff or the plaintiff's agent, assignee, or personal representative was notified of payment or received the check, order, or note marked "paid".

**History: En. Sec. 523, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 78, L. 1905; re-en. Sec. 6456, Rev. C. 1907; re-en. Sec. 9046, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 348; re-en. Sec. 9046, R.C.M. 1935; R.C.M. 1947, 93-2618; amd. Sec. 19, Ch. 12, L. 1979; amd. Sec. 599, Ch. 56, L. 2009.**

**27-2-214. Actions for mesne profits of real property.** The period prescribed for the commencement of an action for mesne profits of real property is within 10 years.

**History: Ap. p. Sec. 1, p. 172, L. 1889; amd. Sec. 511, C. Civ. Proc. 1895; re-en. Sec. 6444, Rev. C. 1907; re-en. Sec. 9028; R.C.M. 1921; Cal. C. Civ. Proc. Sec. 336; re-en. Sec. 9028, R.C.M. 1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(2).**

**27-2-215. Renumbered 27-2-231.** Code Commissioner, 1989.

**27-2-216. Tort actions — childhood sexual abuse.** (1) Except as provided in subsection (4), an action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse against the individual who committed the acts must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-625, 45-5-627, 45-5-702, 45-5-705, 45-5-706, 45-5-711, or prior similar laws in effect at the time the act occurred.

(3) Except as provided in subsection (5), in an action for recovery of damages for liability against any entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff, the action must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(4) A claim for damages described in subsection (1) that would otherwise be barred because the applicable statute of limitations has expired may be commenced within 1 year of May 7, 2019, if the individual who committed the act of childhood sexual abuse against the plaintiff is alive at the time the action proceeds or is commenced and:

(a) has admitted to the commission of the act of childhood sexual abuse against the plaintiff in either a written and signed statement or a statement recorded by audio or video; or

(b) (i) has made one or more statements admitting to the commission of the act of childhood sexual abuse against the plaintiff under oath or in a plea agreement; or

(ii) has been convicted of an offense listed in subsection (2) in which the plaintiff was the victim.

(5) (a) A claim for damages described in subsection (3) that would otherwise be barred because the applicable statute of limitations has expired must be revived if the court concludes that the entity against whom the action is commenced, based upon documents or admissions by employees, officers, directors, officials, volunteers, representatives, or agents of the entity, knew, had reason to know, or was otherwise on notice of any unlawful sexual conduct by an employee, officer, director, official, volunteer, representative, or agent and failed to take reasonable steps to prevent future acts of unlawful sexual conduct.

(b) A cause of action in which allegations described in subsection (5)(a) are made but that would otherwise be barred by the statute of limitations in subsection (3) may be commenced within 1 year of May 7, 2019.

(6) As used in subsection (5), "admissions" include:

(a) a criminal conviction of an employee, officer, director, official, volunteer, representative, or agent of the entity for an offense of childhood sexual abuse;

(b) a written statement;

(c) a documented or recorded oral statement; or

(d) statements made in:

(i) a plea agreement or change of plea hearing;

(ii) a trial; or

(iii) a settlement agreement.

(7) The provisions of 27-2-401 apply to this section.

**History: En. Sec. 2, Ch. 158, L. 1989; amd. Sec. 1, Ch. 225, L. 2013; amd. Sec. 3, Ch. 367, L. 2019; amd. Sec. 3, Ch. 167, L. 2023.**

**27-2-217. Repealed.** Sec. 10, Ch. 367, L. 2019.

**History: En. Sec. 3, Ch. 560, L. 1993.**

**27-2-218. Actions against real estate appraisers, real estate appraisal firms, and appraisal management companies.** (1) Except as provided in subsection (2), an action for damages or other relief arising from an appraisal or appraisal review conducted by a real estate appraiser, real estate appraisal firm, or appraisal management company may not be commenced more than 5 years after the day the appraisal or appraisal review was completed.

(2) An action subject to the period of limitation found in 27-2-202(1) arising from an appraisal or appraisal review conducted by a real estate appraiser, real estate appraisal firm, or appraisal management company may not be commenced more than 8 years after the day the appraisal or appraisal review was completed.

(3) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action.

(4) As used in this section, unless the context requires otherwise, the following definitions apply:

(a) "Appraisal" has the same meaning as provided in 37-54-102.

(b) "Appraisal management company" means an entity registered under Title 37, chapter 54, part 5.

(c) "Appraisal review" has the same meaning as provided in 37-54-102.

(d) "Real estate appraisal firm" means an entity engaging a real estate appraiser as an owner, member, shareholder, partner, employee, or independent contractor to perform an appraisal or appraisal review.

(e) "Real estate appraiser" means an individual licensed or certified under Title 37, chapter 54.

**History: En. Sec. 1, Ch. 193, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**27-2-219.** *(Effective October 1, 2026)* **Tort actions — gender transition treatment for minors.** (1) An action brought by a person for damages for injuries suffered from gender transition treatment the person received as a minor must be commenced by the date the person reaches 25 years of age or within 2 years from the time of discovery by the person of both the injury and the causal relationship between the gender transition treatment and the injury, whichever occurs later, except that an action may not be commenced after the person reaches 30 years of age.

(2) An action brought pursuant to 50-4-1405 for injuries suffered from gender transition treatment the person received as a minor must be brought within the timeframes specified in this section.

(3) For the purposes of this section, "gender transition treatment" means the following medical treatments provided:

(a) to a female minor to address the minor's perception that her gender or sex is not female:

(i) surgical procedures, including a vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular protheses, subcutaneous mastectomy, voice surgery, and pectoral implants;

(ii) supraphysiologic doses of testosterone or other androgens; or

(iii) puberty blockers, such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female minors; and

(b) to a male minor to address the minor's perception that his gender or sex is not male:

(i) surgical procedures, including a penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, voice surgery, thyroid cartilage reduction, and gluteal augmentation;

(ii) supraphysiologic doses of estrogen; or

(iii) puberty blockers, such as GnRH agonists or other synthetic drugs that suppress the production of testosterone to delay or suppress pubertal development in male minors.

**History: En. Sec. 1, Ch. 709, L. 2025, Sec. 12, Ch. 709, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 11, Ch. 709, L. 2025, provided that this section is effective October 1, 2026.

*2025 Enactment — Coordination:* The enactment of this section by sec. 1, Ch. 709, L. 2025, was amended by sec. 12, Ch. 709, L. 2025, a coordination section.

**27-2-220 through 27-2-230 reserved.**

**27-2-231. Other actions.** An action for relief not otherwise provided for must be commenced within 5 years after the cause of action accrues.

**History: En. Sec. 518, C. Civ. Proc. 1895; re-en. Sec. 6451, Rev. C. 1907; re-en. Sec. 9041, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 343; re-en. Sec. 9041, R.C.M. 1935; R.C.M. 1947, 93-2613; amd. Sec. 20, Ch. 12, L. 1979; Sec. 27-2-215, MCA 1987; redes. 27-2-231 by Code Commissioner, 1989.**

## Part 3
## Accrual of Cause of Action

**27-2-301. When demand necessary to perfect right to action.** Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

**History: En. Sec. 551, C. Civ. Proc. 1895; re-en. Sec. 6468, Rev. C. 1907; re-en. Sec. 9058, R.C.M. 1921; re-en. Sec. 9058, R.C.M. 1935; R.C.M. 1947, 93-2712; amd. Sec. 2, Ch. 441, L. 1987.**

**27-2-302. Actions based on mutual accounts.** In an action brought to recover a balance due upon a mutual, open, and current account where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

**History: En. Sec. 48, p. 50, L. 1877; re-en. Sec. 48, 1st Div. Rev. Stat. 1879; re-en. Sec. 48, 1st Div. Comp. Stat. 1887; re-en. Sec. 519, C. Civ. Proc. 1895; re-en. Sec. 6452, Rev. C. 1907; re-en. Sec. 9042, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 344; re-en. Sec. 9042, R.C.M. 1935; R.C.M. 1947, 93-2614.**

**27-2-303. Actions for waste, trespass, or injury committed during mining work or exploration.** When waste, trespass, or injury is committed by reason of underground work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal resources, or other minerals, the cause of action is not considered to have accrued until the discovery by the aggrieved party of the facts constituting such waste, trespass, or injury.

**History: En. Sec. 1, p. 50, L. 1893; re-en. Sec. 524, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 128, L. 1903; re-en. Sec. 6449, Rev. C. 1907; amd. Sec. 1, Ch. 47, L. 1917; amd. Sec. 1, Ch. 172, L. 1921; re-en. Sec. 9033, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 338; re-en. Sec. 9033, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1975; R.C.M. 1947, 93-2607(part); amd. Sec. 21, Ch. 12, L. 1979.**

**Cross-References**

Injuries involving property — limitation, 27-2-207.

**27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration.** The time within which an action must be commenced by an executor or administrator to recover personal property taken after the death of a testator or intestate and before the issuing of letters of administration or to recover damages for taking, detaining, or injuring personal property within the same period shall be computed from:

(1) the time of issuing such letters if they are issued within 5 years of the death;

(2) 5 years after the death if the letters have not then been issued.

**History:** En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; R.C.M. 1947, 93-2706(part); amd. Sec. 22, Ch. 12, L. 1979.

**Cross-References**

Statutes of limitation on decedent's cause of action — applicability, 72-3-123.

Personal representative — standing to sue, 72-3-604.

## Part 4
## Circumstances Which Extend Period of Limitations

**27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor or has been committed pursuant to 53-21-127, the time of the disability is not a part of the time limit for commencing the action. However, the time limit cannot be extended more than 5 years by the disability of commitment.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded were under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to recover damages. In the action, the person may recover the sum or the value of the property that the person would have received upon the final distribution of the estate if an action had been commenced in a timely manner by the personal representative.

(3) A person may not claim a disability unless it existed when the right of action or entry accrued.

(4) When both disabilities referred to in subsection (1) coexist at the time that the right of action or entry accrues, the limitation does not attach until both are removed.

**History:** (1)En. Sec. 14, p. 468, Bannack Stat.; re-en. Sec. 12, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 542, C. Civ. Proc. 1895; re-en. Sec. 6459, Rev. C. 1907; re-en. Sec. 9049, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 352; re-en. Sec. 9049, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1977; Sec. 93-2703, R.C.M. 1947; (2)En. Sec. 545, C. Civ. Proc. 1895; re-en. Sec. 6462, Rev. C. 1907; re-en. Sec. 9052, R.C.M. 1921; re-en. Sec. 9052, R.C.M. 1935; Sec. 93-2706, R.C.M. 1947; (3)En. Sec. 19, p. 469, Bannack Stat.; re-en. Sec. 17, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 549, C. Civ. Proc. 1895; re-en. Sec. 6466, Rev. C. 1907; re-en. Sec. 9056, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 357; re-en. Sec. 9056, R.C.M. 1935; Sec. 93-2710, R.C.M. 1947; (4)En. Sec. 20, p. 469, Bannack Stat.; re-en. Sec. 18, p. 518, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 550, C. Civ. Proc. 1895; re-en. Sec. 6467, Rev. C. 1907; re-en. Sec. 9057, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 358; re-en. Sec. 9057, R.C.M. 1935; Sec. 93-2711, R.C.M. 1947; R.C.M. 1947, 93-2703, 93-2706(part), 93-2710, 93-2711; amd. Sec. 23, Ch. 12, L. 1979; amd. Sec. 3, Ch. 441, L. 1987; amd. Sec. 1, Ch. 46, L. 1995; amd. Sec. 4, Ch. 490, L. 1997.

**27-2-402. When defendant is out of state.** When the cause of action accrues against a person who is out of the state and cannot be served with process, the action may be commenced within the term limited under this part after the person's return to the state. If, after the cause of action accrues, the person departs from the state and cannot be served with process, the time of the person's absence is not part of the time limited for the commencement of the action.

**History:** En. Sec. 13, p. 468, Bannack Stat.; re-en. Sec. 11, p. 517, Cod. Stat. 1871; re-en. Sec. 50, p. 50, L. 1877; re-en. Sec. 50, 1st Div. Rev. Stat. 1879; re-en. Sec. 50, 1st Div. Comp. Stat. 1887; re-en. Sec. 541, C. Civ. Proc. 1895; re-en. Sec. 6458, Rev. C. 1907; re-en. Sec. 9048, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 351; re-en. Sec. 9048, R.C.M. 1935; R.C.M. 1947, 93-2702; amd. Sec. 4, Ch. 441, L. 1987; amd. Sec. 600, Ch. 56, L. 2009.

**27-2-403. Actions involving aliens in time of war.** When a person is an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

**History:** En. Sec. 16, p. 469, Bannack Stat.; re-en. Sec. 14, p. 517, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 546, C. Civ. Proc. 1895; re-en. Sec. 6463, Rev. C. 1907; re-en. Sec. 9053, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 354; re-en. Sec. 9053, R.C.M. 1935; R.C.M. 1947, 93-2707.

**27-2-404. When party dies before action commenced.** If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced by the deceased's representatives after the expiration of that time and within 1 year from death.

**History: Ap. p. Sec. 15, p. 468, Bannack Stat.; re-en. Sec. 13, p. 517, Cod. Stat. 1871; repealed Sec. 674, p. 215, L. 1877; re-en. Sec. 543, C. Civ. Proc. 1895; re-en. Sec. 6460, Rev. C. 1907; re-en. Sec. 9050, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 353; re-en. Sec. 9050, R.C.M. 1935; Sec. 93-2704, R.C.M. 1947; Ap. p. Sec. 544, C. Civ. Proc. 1895; re-en. Sec. 6461, Rev. C. 1907; re-en. Sec. 9051, R.C.M. 1921; re-en. Sec. 9051, R.C.M. 1935; Sec. 93-2705, R.C.M. 1947; R.C.M. 1947, 93-2704, 93-2705; amd. Sec. 1, Ch. 592, L. 1995.**

**Cross-References**

Statutes of limitation on decedent's cause of action — applicability, 72-3-123.

Personal representative — standing to sue, 72-3-604.

**27-2-405. When controversy submitted to arbitration.** When the persons who might be adverse parties in an action have entered into a written agreement to submit to arbitration or to refer the cause of action or a controversy in which it might be available or have entered into a written submission of the cause or controversy to arbitrators and, before an award or other determination, the agreement or submission is revoked, so as to render it ineffectual, by the death of either party or by the act of the person against whom the action might have been brought or the execution or the remedy upon an award or other determination is stayed by injunction or other order procured from a competent court or judge, the time that has elapsed between the entering into the written submission or agreement and the revocation of the submission or agreement or the expiration of the stay is not a part of the time limited for the commencement of the action.

**History: En. Sec. 552, C. Civ. Proc. 1895; re-en. Sec. 6469, Rev. C. 1907; re-en. Sec. 9059, R.C.M. 1921; re-en. Sec. 9059, R.C.M. 1935; R.C.M. 1947, 93-2713; amd. Sec. 601, Ch. 56, L. 2009.**

**Cross-References**

Uniform Arbitration Act, Title 27, ch. 5.

**27-2-406. When action stayed by injunction or other order or statutory prohibition.** When the commencement of an action is stayed by injunction or other order of the court or judge or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

**History: En. Sec. 18, p. 469, Bannack Stat.; re-en. Sec. 16, p. 518, Cod. Stat. 1871; re-en. Sec. 52, p. 50, L. 1877; re-en. Sec. 52, 1st Div. Rev. Stat. 1879; re-en. Sec. 52, 1st Div. Comp. Stat. 1887; amd. Sec. 548, C. Civ. Proc. 1895; re-en. Sec. 6465, Rev. C. 1907; re-en. Sec. 9055, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 356; re-en. Sec. 9055, R.C.M. 1935; R.C.M. 1947, 93-2709.**

**Cross-References**

Malpractice claims — tolling of statute of limitations, 27-6-702.

Chiropractic claims — tolling of statute of limitations, 27-12-701.

**27-2-407. When action terminated or judgment reversed.** If an action is commenced within the time limited for the action and a judgment is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action for the same cause after the expiration of the time limited and within 1 year after a reversal or termination.

**History: En. Sec. 17, p. 469, Bannack Stat.; re-en. Sec. 15, p. 518, Cod. Stat. 1871; re-en. Sec. 51, p. 50, L. 1877; re-en. Sec. 51, 1st Div. Rev. Stat. 1879; re-en. Sec. 51, 1st Div. Comp. Stat. 1887; amd. Sec. 547, C. Civ. Proc. 1895; re-en. Sec. 6464, Rev. C. 1907; re-en. Sec. 9054, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 355; re-en. Sec. 9054, R.C.M. 1935; R.C.M. 1947, 93-2708; amd. Sec. 602, Ch. 56, L. 2009.**

**27-2-408. Assertion of counterclaim.** (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant.

(2) The time period between the commencement and termination of an action is not part of the time limit for the commencement of an action by a defendant to recover for a counterclaim or to interpose it in that action or another action by the same plaintiff or a successor arising out of the same transaction or occurrence.

**History: En. Sec. 553, C. Civ. Proc. 1895; re-en. Sec. 6470, Rev. C. 1907; re-en. Sec. 9060, R.C.M. 1921; re-en. Sec. 9060, R.C.M. 1935; R.C.M. 1947, 93-2714; amd. Sec. 24, Ch. 12, L. 1979; amd. Sec. 5, Ch. 441, L. 1987; amd. Sec. 603, Ch. 56, L. 2009.**

**27-2-409. Acknowledgment of debt or part payment.** (1) An acknowledgment or the part payment of a debt is sufficient evidence to cause the relevant statute of limitations to begin running anew.

(2) An acknowledgment must be contained in some writing signed by the party to be charged thereby.

(3) Part payment is any payment of principal or interest.

**History: En. Sec. 21, p. 469, Bannack Stat.; re-en. Sec. 19, p. 518, Cod. Stat. 1871; re-en. Sec. 53, p. 50, L. 1877; re-en. Sec. 53, 1st Div. Rev. Stat. 1879; re-en. Sec. 53, 1st Div. Comp. Stat. 1887; amd. Sec. 555, C. Civ. Proc. 1895; re-en. Sec. 6472, Rev. C. 1907; re-en. Sec. 9062, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 360; re-en. Sec. 9062, R.C.M. 1935; R.C.M. 1947, 93-2716; amd. Sec. 25, Ch. 12, L. 1979; amd. Sec. 6, Ch. 441, L. 1987.**

## Part 5
## Conflict of Laws

**27-2-501. Short title.** This part may be cited as the "Uniform Conflict of Laws — Limitations Act".

**History: En. Sec. 1, Ch. 293, L. 1991.**

**27-2-502. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

**History: En. Sec. 2, Ch. 293, L. 1991.**

**27-2-503. Conflict of laws — limitation periods.** (1) Except as provided by 27-2-505, if a claim is substantively based:

(a) upon the law of one other state, the limitation period of that state applies; or

(b) upon the law of more than one state, the limitation period of one of those states chosen by this part applies.

(2) The limitation period of Montana applies to all other claims.

**History: En. Sec. 3, Ch. 293, L. 1991.**

**27-2-504. Rules applicable to computation of limitation period.** If the statute of limitations of another state applies to the assertion of a claim in Montana, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period but its statutes and other rules of law governing conflict of laws do not apply.

**History: En. Sec. 4, Ch. 293, L. 1991.**

**27-2-505. Unfairness.** If a court determines that the limitation period of another state applicable under 27-2-503 and 27-2-504 is substantially different from the limitation period of Montana and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of Montana applies.

**History: En. Sec. 5, Ch. 293, L. 1991.**

**27-2-506. Existing and future claims.** This part applies to claims:

(1) accruing after October 1, 1991; or

(2) asserted in a civil action or proceeding more than 1 year after October 1, 1991, but do not revive a claim barred before October 1, 1991.

**History: En. Sec. 6, Ch. 293, L. 1991.**

**27-2-507. Uniformity of application and construction.** This part must be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of this part among states enacting it.

**History: En. Sec. 7, Ch. 293, L. 1991.**

## CHAPTERS 3 AND 4
## RESERVED

# CHAPTER 5
# UNIFORM ARBITRATION ACT

### Part 1 — Submission to Arbitration

27-5-101. Repealed.
27-5-102. Repealed.
27-5-103. Repealed.
27-5-104. Repealed.
27-5-105. Repealed.
27-5-106 through 27-5-110 reserved.
27-5-111. Short title.
27-5-112. Uniformity of interpretation.
27-5-113. Application to labor agreements.
27-5-114. Validity of arbitration agreement — exceptions.
27-5-115. Proceedings to compel or stay arbitration.
27-5-116. Short title — neutral arbitrator's disclosure required.

### Part 2 — Action by Arbitrators

27-5-201. Repealed.
27-5-202. Repealed.
27-5-203. Repealed.
27-5-204 through 27-5-210 reserved.
27-5-211. Appointment of arbitrators — conflict of interest provisions applicable.
27-5-212. Majority action by arbitrators.
27-5-213. Hearing.
27-5-214. Representation by attorney.
27-5-215. Witnesses, subpoenas, and depositions.
27-5-216. Award.
27-5-217. Change of award by arbitrators.
27-5-218. Fees and expenses of arbitration.

### Part 3 — Procedure Following Award

27-5-301. Repealed.
27-5-302. Repealed.
27-5-303. Repealed.
27-5-304. Repealed.
27-5-305 through 27-5-310 reserved.
27-5-311. Confirmation of award by court.
27-5-312. Vacating an award.
27-5-313. Modification or correction of award by court.
27-5-314. Judgment on award — costs.
27-5-315 through 27-5-320 reserved.
27-5-321. Applications to court — how made.
27-5-322. Jurisdiction of district court.
27-5-323. Venue.
27-5-324. Appeals.

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**Chapter Cross-References**

Uniform Family Law Arbitration Act, Title 40, ch. 16, part 1.

## Part 1
## Submission to Arbitration

**Part Cross-References**

Multistate Tax Compact — Article IX arbitration provisions, 15-1-601.
Arbitration of stream portage rights, 23-2-311.
Statute of limitations tolled by submission to arbitration, 27-2-405.
Medical malpractice claims — effect of arbitration, 27-6-105.
Chiropractic malpractice claims — arbitration, 27-12-105.
Arbitration of farm mutual insurance claims, 33-4-411.
Arbitration of new motor vehicle warranty disputes, 61-4-515.
Arbitration of threshers' lien claims, 71-3-801.
Arbitration of hail insurance claims, 80-2-243.
Arbitration of watercourse construction projects adversely affecting fish and game habitat, 87-5-505.

**27-5-101. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 302, p. 106, Bannack Stat.; re-en. Sec. 358, p. 207, L. 1867; re-en. Sec. 432, p. 122, Cod. Stat. 1871; re-en. Sec. 459, p. 163, L. 1877; re-en. Sec. 459, 1st Div. Rev. Stat. 1879; re-en. Sec. 472, 1st Div. Comp. Stat. 1887; re-en. Sec. 2270, C. Civ. Proc. 1895; re-en. Sec. 7365, Rev. C. 1907; re-en. Sec. 9972, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1281; re-en. Sec. 9972, R.C.M. 1935; R.C.M. 1947, 93-201-1.**

**27-5-102. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 303, p. 106, Bannack Stat.; re-en. Sec. 359, p. 207, L. 1867; re-en. Sec. 433, p. 122, Cod. Stat. 1871; re-en. Sec. 460, p. 163, L. 1877; re-en. Sec. 460, 1st Div. Rev. Stat. 1879; re-en. Sec. 473, 1st Div. Comp. Stat. 1887; re-en. Sec. 2271, C. Civ. Proc. 1895; re-en. Sec. 7366, Rev. C. 1907; re-en. Sec. 9973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1282; re-en. Sec. 9973, R.C.M. 1935; R.C.M. 1947, 93-201-2.**

**27-5-103. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).**

**27-5-104. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 304, p. 107, Bannack Stat.; re-en. Sec. 360, p. 207, L. 1867; re-en. Sec. 434, p. 122, Cod. Stat. 1871; re-en. Sec. 461, p. 163, L. 1877; re-en. Sec. 461, 1st Div. Rev. Stat. 1879; re-en. Sec. 474, 1st Div. Comp. Stat. 1887; re-en. Sec. 2272, C. Civ. Proc. 1895; re-en. Sec. 7367, Rev. C. 1907; re-en. Sec. 9974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1283; re-en. Sec. 9974, R.C.M. 1935; R.C.M. 1947, 93-201-3(part).**

**27-5-105. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 311, p. 109, Bannack Stat.; re-en. Sec. 367, p. 209, L. 1867; re-en. Sec. 441, p. 123, Cod. Stat. 1871; re-en. Sec. 468, p. 165, L. 1877; re-en. Sec. 468, 1st Div. Rev. Stat. 1879; re-en. Sec. 481, 1st Div. Comp. Stat. 1887; re-en. Sec. 2279, C. Civ. Proc. 1895; re-en. Sec. 7374, Rev. C. 1907; re-en. Sec. 9981, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1290; re-en. Sec. 9981, R.C.M. 1935; R.C.M. 1947, 93-201-10.**

**27-5-106 through 27-5-110 reserved.**

**27-5-111. Short title.** This chapter may be cited as the "Uniform Arbitration Act".

**History: En. Sec. 1, Ch. 684, L. 1985.**

**27-5-112. Uniformity of interpretation.** This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

**History: En. Sec. 2, Ch. 684, L. 1985.**

**27-5-113. Application to labor agreements.** Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-115, 27-5-311, 27-5-312(1) and (3) through (5), 27-5-313, and 27-5-322 apply in each case.

**History: En. Sec. 3, Ch. 684, L. 1985; amd. Sec. 1, Ch. 258, L. 1991.**

**Cross-References**

Arbitration of unlawful termination of public employee, 2-18-621.
Arbitration of public employees' collective bargaining issue, 39-31-310.
Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.

**27-5-114. Validity of arbitration agreement — exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit when the total consideration to be paid or furnished by the individual is $5,000 or less;

(c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

(d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

**History: En. Sec. 4, Ch. 684, L. 1985; amd. Sec. 1, Ch. 236, L. 1989; amd. Sec. 1, Ch. 611, L. 1989; amd. Sec. 1, Ch. 19, L. 1997.**

**Cross-References**

Arbitration of unlawful termination of public employee, 2-18-621.
Statute of limitations tolled by submission to arbitration, 27-2-405.
Illegal objects and provisions of contracts, Title 28, ch. 2, part 7.
Arbitration of public employees' collective bargaining issue, 39-31-310.
Arbitration of firefighters' collective bargaining issue, Title 39, ch. 34, part 1.
Arbitration of new motor vehicle warranty disputes, 61-4-515.
Arbitration of threshers' lien claims, 71-3-801.

**27-5-115. Proceedings to compel or stay arbitration.** (1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration; but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

**History: En. Sec. 5, Ch. 684, L. 1985.**

**Cross-References**

Statute of limitations tolled by submission to arbitration, 27-2-405.

**27-5-116. Short title — neutral arbitrator's disclosure required.** (1) This section may be cited as the "Fairness in Arbitration Act".

(2) Beginning October 1, 2009, a person who has been proposed, nominated, or appointed as a neutral arbitrator pursuant to an arbitration agreement, other than one contained in a collective bargaining agreement, shall comply with the requirements of this section.

(3) A person who has been proposed, nominated, or appointed as a neutral arbitrator for an arbitration proceeding shall disclose to each party all matters that could cause a person aware of the facts underlying a potential conflict of interest to have a reasonable doubt that the person would be able to act as a neutral or impartial arbitrator.

(4) In addition to any matters disclosed pursuant to subsection (3), the person proposed, nominated, or appointed shall disclose:

(a) the existence, regarding the person, of any ground specified in 3-1-803 for disqualification of a judge;

(b) whether the person has been employed by a party to the arbitration proceeding within the last 5 years;

(c) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(c)(i), as appropriate, the:

(A) date of the arbitration award;

(B) identification of the prevailing party;

(C) names of the parties' attorneys; and

(D) amount of monetary damages awarded, if any;

(d) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(d)(i), as appropriate, the:

(A) date of the arbitration award;

(B) identification of the prevailing party;

(C) identification of the person and the party who selected the person to serve as a neutral arbitrator, if any;

(D) names of the parties' attorneys; and

(E) amount of monetary damages awarded, if any; and

(e) any attorney-client relationship the person has or has had with a party or an attorney for a party to the arbitration proceeding within the last 5 years.

(5) In order to preserve confidentiality, it is sufficient for the purposes of subsections (4)(c) and (4)(d) for the person to identify any party who is not a party to the pending arbitration proceeding as "claimant" or "respondent" if that party is or was an individual and not a business or corporate entity.

(6) The person proposed, nominated, or appointed as a neutral arbitrator shall make the disclosure required by this section in writing to all parties by serving a disclosure upon the parties within 10 days of any notice of the person's proposal, nomination, or appointment. The disclosure must be served in accordance with Title 25, chapter 3, part 2.

(7) An arbitration proceeding does not include an arbitration proceeding pursuant to a collective bargaining agreement.

(8) This section does not apply to:

(a) arbitration agreements that have been approved by the United States security and exchange commission pursuant to the Securities and Exchange Act of 1934; or

(b) arbitrations conducted by the Montana bar association's voluntary fee arbitration program.

**History: En. Sec. 1, Ch. 339, L. 2009.**

## Part 2
## Action by Arbitrators

**27-5-201. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; R.C.M. 1947, 93-201-5(part).**

**27-5-202. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: Ap. p. Sec. 305, p. 107, Bannack Stat.; re-en. Sec. 361, p. 208, L. 1867; re-en. Sec. 435, p. 122, Cod. Stat. 1871; re-en. Sec. 462, p. 164, L. 1877; re-en. Sec. 462, 1st Div. Rev. Stat. 1879; re-en. Sec. 475, 1st Div. Comp. Stat. 1887; re-en. Sec. 2273, C. Civ. Proc. 1895; re-en. Sec. 7368, Rev. C. 1907; re-en. Sec. 9975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1284; re-en. Sec. 9975, R.C.M. 1935; Sec. 93-201-4, R.C.M. 1947; Ap. p. Sec. 306, p. 107, Bannack Stat.; re-en. Sec. 362, p. 208, L. 1867; re-en. Sec. 436, p. 122, Cod. Stat. 1871; re-en. Sec. 463, p. 164, L. 1877; re-en. Sec. 463, 1st Div. Rev. Stat. 1879; re-en. Sec. 476, 1st Div. Comp. Stat. 1887; re-en. Sec. 2274, C. Civ. Proc. 1895; re-en. Sec. 7369, Rev. C. 1907; re-en. Sec. 9976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1285; re-en. Sec. 9976, R.C.M. 1935; Sec. 93-201-5, R.C.M. 1947; R.C.M. 1947, 93-201-4, 93-201-5(part).**

**27-5-203. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History: En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part).**

**27-5-204 through 27-5-210 reserved.**

**27-5-211. Appointment of arbitrators — conflict of interest provisions applicable.** Except as provided in 27-5-116, if the arbitration agreement provides a method of appointment of arbitrators, this method must be followed. If a method is not provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and the arbitrator's successor has not been appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. A neutral arbitrator appointed by the district court on or after October 1, 2009, shall comply with the provisions of 27-5-116.

**History: En. Sec. 6, Ch. 684, L. 1985; amd. Sec. 604, Ch. 56, L. 2009; amd. Sec. 2, Ch. 339, L. 2009.**

**27-5-212. Majority action by arbitrators.** The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

**History: En. Sec. 7, Ch. 684, L. 1985.**

**27-5-213. Hearing.** Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(3) The hearing must be conducted by all the arbitrators, but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

**History: En. Sec. 8, Ch. 684, L. 1985.**

**27-5-214. Representation by attorney.** A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver of this right prior to the proceeding or hearing is ineffective.

**History: En. Sec. 9, Ch. 684, L. 1985.**

**27-5-215. Witnesses, subpoenas, and depositions.** (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.

(4) Fees for attendance as a witness are the same as for a witness in the district court.

**History: En. Sec. 10, Ch. 684, L. 1985.**

**27-5-216. Award.** (1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within the time that the district court orders on application of a party. The parties may extend the time, in writing, either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the party's objection prior to the delivery of the award to that party.

**History:** **En. Sec. 11, Ch. 684, L. 1985; amd. Sec. 605, Ch. 56, L. 2009.**

**27-5-217. Change of award by arbitrators.** On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, on submission to the arbitrators by the court under conditions that the court may order, the arbitrators may modify or correct the award upon the grounds stated in 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice must be given immediately to the opposing party, stating that the opposing party must serve the party's objections to the award, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

**History:** **En. Sec. 12, Ch. 684, L. 1985; amd. Sec. 606, Ch. 56, L. 2009.**

**27-5-218. Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, must be paid as provided in the award.

**History:** **En. Sec. 13, Ch. 684, L. 1985.**

**Cross-References**

Cost of arbitration between firefighters' organization and public employer, 39-34-106.

## Part 3
## Procedure Following Award

**27-5-301. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History:** **En. Sec. 308, p. 108, Bannack Stat.; re-en. Sec. 364, p. 208, L. 1867; re-en. Sec. 438, p. 123, Cod. Stat. 1871; re-en. Sec. 465, p. 165, L. 1877; re-en. Sec. 465, 1st Div. Rev. Stat. 1879; re-en. Sec. 478, 1st Div. Comp. Stat. 1887; re-en. Sec. 2276, C. Civ. Proc. 1895; re-en. Sec. 7371, Rev. C. 1907; re-en. Sec. 9978, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1287; re-en. Sec. 9978, R.C.M. 1935; R.C.M. 1947, 93-201-7.**

**27-5-302. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History:** **En. Sec. 309, p. 108, Bannack Stat.; re-en. Sec. 365, p. 209, L. 1867; re-en. Sec. 439, p. 123, Cod. Stat. 1871; re-en. Sec. 466, p. 165, L. 1877; re-en. Sec. 466, 1st Div. Rev. Stat. 1879; re-en. Sec. 479, 1st Div. Comp. Stat. 1887; re-en. Sec. 2277, C. Civ. Proc. 1895; re-en. Sec. 7372, Rev. C. 1907; re-en. Sec. 9979, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1288; re-en. Sec. 9979, R.C.M. 1935; R.C.M. 1947, 93-201-8.**

**27-5-303. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History:** **En. Sec. 307, p. 108, Bannack Stat.; re-en. Sec. 363, p. 208, L. 1867; re-en. Sec. 437, p. 123, Cod. Stat. 1871; re-en. Sec. 464, p. 164, L. 1877; re-en. Sec. 464, 1st Div. Rev. Stat. 1879; re-en. Sec. 477, 1st Div. Comp. Stat. 1887; re-en. Sec. 2275, C. Civ. Proc. 1895; re-en. Sec. 7370, Rev. C. 1907; re-en. Sec. 9977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1286; re-en. Sec. 9977, R.C.M. 1935; R.C.M. 1947, 93-201-6(part); amd. Sec. 26, Ch. 12, L. 1979.**

**27-5-304. Repealed.** Sec. 28, Ch. 684, L. 1985.

**History:** **En. Sec. 310, p. 109, Bannack Stat.; re-en. Sec. 366, p. 209, L. 1867; re-en. Sec. 440, p. 123, Cod. Stat. 1871; re-en. Sec. 467, p. 165, L. 1877; re-en. Sec. 467, 1st Div. Rev. Stat. 1879; re-en. Sec. 480, 1st Div. Comp. Stat. 1887; re-en. Sec. 2278, C. Civ. Proc. 1895; re-en. Sec. 7373, Rev. C. 1907; re-en. Sec. 9980, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1289; re-en. Sec. 9980, R.C.M. 1935; R.C.M. 1947, 93-201-9.**

**27-5-305 through 27-5-310 reserved.**

**27-5-311. Confirmation of award by court.** Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

**History:** **En. Sec. 14, Ch. 684, L. 1985.**

**27-5-312. Vacating an award.** (1) Upon the application of a party, the district court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown or refused to hear evidence material to the controversy or otherwise conducted the hearing, contrary to the provisions of 27-5-213, in a manner that substantially prejudiced the rights of a party;

(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection; or

(f) a neutral arbitrator failed to make a material disclosure required by 27-5-116. An award may be vacated because of a material noncompliance with 27-5-116 no later than 90 days following discovery of the failure to disclose.

(2) The fact that the relief could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after the grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

**History: En. Sec. 15, Ch. 684, L. 1985; amd. Sec. 3, Ch. 339, L. 2009.**

**27-5-313. Modification or correction of award by court.** (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:

(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

**History: En. Sec. 16, Ch. 684, L. 1985.**

**27-5-314. Judgment on award — costs.** (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

(2) The judgment may be docketed as if rendered in an action.

**History: En. Sec. 17, Ch. 684, L. 1985.**

**27-5-315 through 27-5-320 reserved.**

**27-5-321. Applications to court — how made.** Except as otherwise provided, an application to the court under this chapter must be by motion and must be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order must be served in the manner provided by law for the service of a summons in an action.

**History: En. Sec. 18, Ch. 684, L. 1985.**

**27-5-322. Jurisdiction of district court.** The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

**History: En. Sec. 19, Ch. 684, L. 1985.**

**Cross-References**

Statute of limitations tolled by submission to arbitration, 27-2-405.

**27-5-323. Venue.** (1) An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must be made in the county where the adverse party resides or has a place of business or, if the adverse party does not have a residence or place of business in this state, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. An agreement concerning venue involving a resident of this state is not valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature on the agreement.

(2) (a) An agreement concerning venue involving an electrical generation facility in this state is not valid unless the agreement requires that arbitration occur within the state before a panel of three arbitrators selected under the Uniform Arbitration Act unless all parties agree in writing to a single arbitrator.

(b) For the purposes of this subsection, "electrical generation facility" has the meaning provided in 75-20-104.

**History: En. Sec. 20, Ch. 684, L. 1985; amd. Sec. 607, Ch. 56, L. 2009; amd. Sec. 1, Ch. 376, L. 2021.**

**27-5-324. Appeals.** (1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5-115(2);

(c) an order confirming or denying confirmation of an award;

(d) an order modifying or correcting an award;

(e) an order vacating an award without directing a rehearing; or

(f) a judgment entered pursuant to the provisions of this chapter.

(2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

**History: En. Sec. 21, Ch. 684, L. 1985.**

**Cross-References**

Statute of limitations tolled by submission to arbitration, 27-2-405.

## CHAPTER 6
## MONTANA MEDICAL LEGAL PANEL ACT

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**Chapter Cross-References**

Periodic payment of damages — medical malpractice damage limitations, Title 25, ch. 9, part 4.
Medical malpractice claims — request for periodic payment of future damages, 25-9-403.
Medical malpractice noneconomic damages limitation, 25-9-411.
Periodic payment of future damages in medical malpractice cases, 25-9-412.
Liability of mental health professionals, Title 27, ch. 1, part 11.
Statutes of limitations — actions for medical malpractice, 27-2-205.
Montana Chiropractic Legal Panel Act, Title 27, ch. 12.
Nonliability for peer review, Title 37, ch. 2, part 2.
Revocation or suspension of medical license or certificate, 37-3-323.

## Part 1
## General Provisions

**27-6-101. Short title.** This chapter may be cited as the "Montana Medical Legal Panel Act".

**History: En. 17-1301 by Sec. 1, Ch. 449, L. 1977; R.C.M. 1947, 17-1301; amd. Sec. 1, Ch. 376, L. 1983.**

**27-6-102. Purpose.** The purpose of this chapter is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

**History: En. 17-1302 by Sec. 2, Ch. 449, L. 1977; R.C.M. 1947, 17-1302.**

**27-6-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include:

(i) an end-stage renal dialysis facility;

(ii) a home infusion therapy agency;

(iii) a residential care facility; or

(iv) a governmental infirmary, except a university or college infirmary.

(3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as the individual's principal residence or place of medical practice the state of Montana or practices telemedicine as defined in 37-3-102;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of medical practice the state of Montana or practiced telemedicine as defined in 37-3-102 and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

(8) "Podiatrist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

(i) has as the individual's principal residence or place of podiatric practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of podiatry; or

(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6.

**History: En. 17-1303 by Sec. 3, Ch. 449, L. 1977; R.C.M. 1947, 17-1303; amd. Sec. 2, Ch. 376, L. 1983; amd. Sec. 1, Ch. 332, L. 1985; amd. Sec. 1, Ch. 195, L. 1987; amd. Sec. 1, Ch. 96, L. 1989; amd. Sec. 14, Ch. 366, L. 1995; amd. Sec. 1, Ch. 133, L. 1997; amd. Sec. 1, Ch. 370, L. 2001; amd. Sec. 1, Ch. 270, L. 2007; amd. Sec. 1, Ch. 154, L. 2015.**

**Cross-References**

Medicine — regulation and licensing, Title 37, ch. 3.
Hospitals and related facilities, Title 50, ch. 5.

**27-6-104. Creation of panel.** The Montana medical legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

**History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part); amd. Sec. 3, Ch. 376, L. 1983.**

**27-6-105. What claims panel to review — exceptions.** The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except:

(1) those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977; and

(2) a claim brought by an inmate of a correctional facility against a health care provider arising from a health care service provided by the health care provider within the facility.

**History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(part); amd. Sec. 2, Ch. 270, L. 2007.**

**Cross-References**

Uniform Arbitration Act, Title 27, ch. 5.

**27-6-106. Immunity of panel members and witnesses from civil liability.** Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(5).**

## Part 2
## Administration of Act

**27-6-201. Appointment, term, and salary of director.** The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

**History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(4).**

**27-6-202. Employment of staff and maintenance of offices.** (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants that the director considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and its official business transacted.

**History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(4), (5); amd. Sec. 608, Ch. 56, L. 2009.**

**27-6-203. Compensation of panel and staff.** (1) All members of the panel must be paid a salary in the amount of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and the director's staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503, but the expenses must be approved by the director before payment is made.

**History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(1), (2); amd. Sec. 609, Ch. 56, L. 2009.**

**27-6-204. Authority to adopt rules.** The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

**History: En. 17-1313 by Sec. 13, Ch. 449, L. 1977; R.C.M. 1947, 17-1313.**

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**27-6-205. Powers of panel.** The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this chapter, the issuance of subpoenas in connection with the administration of this chapter, and the performance of all other acts required to fairly and effectively administer this chapter.

**History: En. 17-1305 by Sec. 5, Ch. 449, L. 1977; R.C.M. 1947, 17-1305(3).**

**27-6-206. Funding.** (1) There is a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but is open to auditing by the legislative auditor.

(2) (a) To create the fund, a surcharge or assessment must be levied on all health care providers. The amount of the assessment must be set annually by the director and must be apportioned among physicians, dentists, podiatrists, hospitals, and other health care providers by group. Except as provided in subsection (2)(c), for the group of all physicians, the group of all dentists, the group of all podiatrists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment.

(b) Except as provided in subsection (2)(c), the amount of the assessment for the group of all:

(i) hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of public health and human services;

(ii) physicians must be equally assessed against all physicians;

(iii) dentists must be equally assessed against all dentists;

(iv) podiatrists must be equally assessed against all podiatrists; and

(v) other health care facilities must be equally assessed against all other health care facilities.

(c) The annual amount of the assessment levied against each health care provider may not be less than $15.

(d) Surplus funds, if any, above the amount required for the annual administration of the chapter must be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years to not less than $15 for each health care provider, commensurate with the proper administration of this chapter.

(3) The annual surcharge must be paid on April 1 of each year. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The panel may collect the annual surcharge by an action at law.

**History: En. 17-1306 by Sec. 6, Ch. 449, L. 1977; R.C.M. 1947, 17-1306(part); amd. Sec. 1, Ch. 6, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 376, L. 1983; amd. Sec. 2, Ch. 332, L. 1985; amd. Sec. 2, Ch. 195, L. 1987; amd. Sec. 55, Ch. 418, L. 1995; amd. Sec. 80, Ch. 546, L. 1995; amd. Sec. 2, Ch. 133, L. 1997; amd. Secs. 3, 56, Ch. 492, L. 1997.**

**27-6-207. Panel audits.** (1) The panel may be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. Any audit that is conducted by the legislative auditor under 5-13-411 must include a determination of the adequacy, sufficiency, and reasonableness of the annual surcharge or assessment provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel.

**History: En. Sec. 1, Ch. 96, L. 1987; amd. Sec. 1, Ch. 264, L. 2019.**

## Part 3
## Preliminary Procedure

**27-6-301. How cases submitted.** Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the claimant or the claimant's attorney, to the director of the panel.

**History: En. 17-1304 by Sec. 4, Ch. 449, L. 1977; R.C.M. 1947, 17-1304(3); amd. Sec. 3, Ch. 332, L. 1985; amd. Sec. 610, Ch. 56, L. 2009.**

**27-6-302. Contents of application — waiver of confidentiality of medical and dental records.** The application must contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct that are believed to constitute a malpractice claim, the dates on which the conduct occurred, and the names and addresses of all physicians, dentists, podiatrists, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, podiatric, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. The statement may not in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

**History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 3, Ch. 195, L. 1987; amd. Sec. 3, Ch. 133, L. 1997.**

**27-6-303. Amendments to application.** Amendments to the application may be authorized by rule.

**History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(part); amd. Sec. 4, Ch. 332, L. 1985.**

**27-6-304. Copies of application to professional societies when vicarious liability claimed.** In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

**History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(3).**

**27-6-305. Service on health care provider.** Upon receipt of an application for review, the director or the director's delegate shall cause to be served a true copy of the application on the health care providers involved. Service must be effected by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested.

**History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 5, Ch. 376, L. 1983; amd. Sec. 611, Ch. 56, L. 2009.**

**27-6-306. Health care provider's appearance and answer — waiver of confidentiality of records.** (1) If a health care provider involved chooses to retain legal counsel, the health care provider's attorney shall informally enter the health care provider's appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, podiatric, and hospital records and information pertaining to the application and, for the purposes of inspection only, waiving any privilege as to the contents of those records. The statement does not waive that privilege for any other purpose.

**History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(part); amd. Sec. 4, Ch. 195, L. 1987; amd. Sec. 4, Ch. 133, L. 1997.**

**Cross-References**

Right to privacy, Art. II, sec. 10, Mont. Const.
Doctor-patient privilege, 26-1-805.
Records of proceedings — confidentiality, 27-6-703.
Nonliability for peer review — evidential privilege — application to nonprofit corporations, 37-2-201.
Uniform health care information, Title 50, ch. 16, part 5.

**27-6-307. Assistance to claimant in obtaining expert consultation.** The panel director shall cooperate fully with the claimant in retaining, to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:

(1) a physician, a physician qualified in the field of medicine involved; or

(2) a dentist, a dentist qualified in the field of dentistry involved.

**History: En. 17-1308 by Sec. 8, Ch. 449, L. 1977; R.C.M. 1947, 17-1308(4); amd. Sec. 5, Ch. 195, L. 1987.**

**27-6-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical, podiatric, or dental records, and other documents that the director considers necessary.

**History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(8); amd. Sec. 6, Ch. 195, L. 1987; amd. Sec. 5, Ch. 133, L. 1997.**

## Part 4
## Formation and Composition of Panel

**27-6-401. Composition of panel.** (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. Three panel members who are podiatrists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more podiatrists. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel and when a claim is heard against a podiatrist, a podiatrist must be substituted for one of the physicians on the panel.

**History: Ap. p. 17-1304 by Sec. 4, Ch. 449, L. 1977; Sec. 17-1304, R.C.M. 1947; Ap. p. 17-1309 by Sec. 9, Ch. 449, L. 1977; Sec. 17-1309, R.C.M. 1947; R.C.M. 1947, 17-1304(2), 17-1309(4), (5); amd. Sec. 5, Ch. 332, L. 1985; amd. Sec. 7, Ch. 195, L. 1987; amd. Sec. 6, Ch. 133, L. 1997.**

**Cross-References**

Health care provider defined, 27-6-103.

Licensing of medical practitioners, Title 37, ch. 3.

**27-6-402. Selection of panelists.** (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall, within 14 days from the date of transmittal of the application, each select 12 proposed panelists from which 3 will be selected.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select 12 persons from the health care provider's profession and, where applicable, from persons specializing in the same field or discipline as the health care provider.

**History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(1), (2); amd. Sec. 27, Ch. 12, L. 1979; amd. Sec. 6, Ch. 376, L. 1983.**

**27-6-403. Panel in cases involving multiple defendants.** Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

**History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(3).**

**27-6-404. Disqualification of panel member.** (1) A member must be disqualified from consideration of a case in which, by virtue of the member's circumstances, the member believes that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as appropriate. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected.

**History: En. 17-1309 by Sec. 9, Ch. 449, L. 1977; R.C.M. 1947, 17-1309(6), (7); amd. Sec. 7, Ch. 376, L. 1983; amd. Sec. 612, Ch. 56, L. 2009.**

## Part 5
## Hearing Procedure

**Part Cross-References**

Due process of law, Art. II, sec. 17, Mont. Const.

**27-6-501. Time and place of hearing.** (1) A date, time, and place for hearing shall be fixed by the director subject to subsection (2), and prompt notice thereof shall be given to the parties involved, the attorneys, and the members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

**History: (1)En. 17-1310 by Sec. 10, Ch. 449, L. 1977; Sec. 17-1310, R.C.M. 1947; (2)En. 17-1305 by Sec. 5, Ch. 449, L. 1977; Sec. 17-1305, R.C.M. 1947; R.C.M. 1947, 17-1305(6), 17-1310.**

**27-6-502. Conduct of hearing.** (1) At the time set for hearing, the claimant submitting the case for review must be present and shall make a brief introduction of the case, including a resume of the facts constituting the alleged professional malpractice that the claimant is prepared to prove. The health care provider against whom the claim is brought and the health care provider's attorney may be present and may make an introductory statement of the health care provider's case.

(2) Both parties may call witnesses to testify before the panel, and the witnesses must be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing must be informal, and an official transcript may not be made.

**History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(1) thru (3); amd. Sec. 613, Ch. 56, L. 2009.**

**27-6-503. Conclusion of hearing — supplemental hearing.** (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which must be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the claimant or the claimant's attorney consents in writing to a longer period.

(2) Any supplemental hearing must be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

**History: En. 17-1311 by Sec. 11, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(4), (5); amd. Sec. 28, Ch. 12, L. 1979; amd. Sec. 614, Ch. 56, L. 2009.**

## Part 6
## Deliberations and Decision of Panel

**27-6-601. Selection of presiding officer.** At or prior to the time set for the hearing, the attorney members of the panel shall select a presiding officer who must be an attorney and who shall preside over the panel deliberations.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part); amd. Sec. 615, Ch. 56, L. 2009.**

**27-6-602. Questions panel must decide.** Upon consideration of all the relevant material, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).**

**27-6-603. Deliberations to be secret — voting.** The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part).**

**27-6-604. Form and content of decision.** The decision must in every case be signed for the panel by the presiding officer, must contain only the conclusions reached by a majority of its members, and must list the number of members, if any, dissenting from the opinion. Upon request of any party, the majority shall briefly explain the reasoning and basis for the decision and the dissenters shall explain the reasoning and basis for disagreement. Each party must be informed by the panel of the right to nonbinding mediation under 27-6-606.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(3); amd. Sec. 1, Ch. 59, L. 1995; amd. Sec. 616, Ch. 56, L. 2009.**

**27-6-605. Decision to be filed and copies sent to parties and attorneys.** The decision must be communicated in writing to the parties and attorneys concerned, and a copy must be retained in the permanent files of the panel.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(part); amd. Sec. 29, Ch. 12, L. 1979; amd. Sec. 1, Ch. 286, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 286, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Board of Medical Examiners, 2-15-1731.
Board of Dentistry, 2-15-1732.
Hospitals and related facilities — licensing, Title 50, ch. 5, part 2.

**27-6-606. Decision not binding — settlement agreements — nonbinding mediation.** (1) The panel's decision is without administrative or judicial authority and is not binding upon any party.

(2) The panel may recommend an award, approve settlement agreements, and discuss the settlement agreements, all in a manner consistent with this part. All approved settlement agreements are binding on the parties.

(3) If the panel decides both questions required by 27-6-602 in the affirmative, the court in which the complaint is filed shall, at the request of a party, require the parties to participate in court-supervised, nonbinding mediation prior to proceeding.

**History: En. 17-1312 by Sec. 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1312(6); amd. Sec. 2, Ch. 59, L. 1995.**

## Part 7

## Effect of Proceedings in Court Action — Confidentiality

**27-6-701. No court action before application to and decision by panel.** No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

**History: En. 17-1307 by Sec. 7, Ch. 449, L. 1977; R.C.M. 1947, 17-1307(1).**

**Cross-References**

Administration of justice — access to courts, Art. II, sec. 16, Mont. Const.

**27-6-702. Tolling of statute of limitations.** The running of the applicable limitation period related to a malpractice claim is tolled upon receipt by the director of the application for review as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action that might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel presiding officer, or from the director upon the consent of the parties to the claim, or after the panel's final decision, whichever occurs first, is entered in the permanent files of the panel and a copy is served upon the complainant or the complainant's attorney if represented by counsel, by certified mail.

**History:** **En. 17-1314 by Sec. 14, Ch. 449, L. 1977; R.C.M. 1947, 17-1314; amd. Sec. 6, Ch. 332, L. 1985; amd. Sec. 2, Ch. 16, L. 1995; amd. Sec. 617, Ch. 56, L. 2009.**

**Cross-References**

Statute of limitations — medical malpractice, 27-2-205.

**27-6-703. Records of proceedings — confidentiality.** The director shall maintain records of all proceedings before the panel, which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be made public and are not subject to subpoena but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

**History:** **En. 17-1315 by Sec. 15, Ch. 449, L. 1977; R.C.M. 1947, 17-1315.**

**Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Appearance and answer — waiver of confidentiality of records, 27-6-306.

**27-6-704. Panel proceedings and decision privileged from disclosure in court actions.** (1) A panel member may not be called to testify in a proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision and the reasoning and basis for the decision of the panel are not admissible as evidence in an action subsequently brought in a court of law and are not evidence for any purpose in an action brought under 33-18-201, 33-18-242, or common law.

**History:** **En. 17-1311, 17-1312 by Secs. 11, 12, Ch. 449, L. 1977; R.C.M. 1947, 17-1311(6), (7), 17-1312(part); amd. Sec. 30, Ch. 12, L. 1979; amd. Sec. 8, Ch. 376, L. 1983; amd. Sec. 3, Ch. 59, L. 1995; amd. Sec. 1, Ch. 253, L. 2005.**

# CHAPTER 7
# SUBMISSION OF CONTROVERSY WITHOUT ACTION

### Part 1 — General Provisions

27-7-101. When and in what court controversy may be submitted.
27-7-102. Action by court.
27-7-103. Entry of judgment — costs.
27-7-104. Enforcement of judgment — appeal.

## Part 1
## General Provisions

**Part Cross-References**

Trial upon agreed statement of facts, 25-7-602.

**27-7-101. When and in what court controversy may be submitted.** Parties to a question in difference which might be subject to a civil action may, without action, agree upon a case containing the facts upon which the controversy depends and present a submission of the same to any court which would have jurisdiction if an action had been brought, but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties.

**History:** **En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254, Rev. C. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).**

**27-7-102. Action by court.** The court must thereupon hear and determine the case and render judgment thereon as if an action were depending.

**History: En. Sec. 299, p. 106, Bannack Stat.; re-en. Sec. 355, p. 207, L. 1867; re-en. Sec. 429, p. 121, Cod. Stat. 1871; re-en. Sec. 455, p. 162, L. 1877; re-en. Sec. 455, 1st Div. Rev. Stat. 1879; re-en. Sec. 468, 1st Div. Comp. Stat. 1887; re-en. Sec. 2050, C. Civ. Proc. 1895; re-en. Sec. 7254, Rev. c. 1907; re-en. Sec. 9872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1138; re-en. Sec. 9872, R.C.M. 1935; R.C.M. 1947, 93-9501(part).**

**Cross-References**

Trial upon agreed statement of facts, 25-7-602.
Judgment, Title 25, ch. 9.

**27-7-103. Entry of judgment — costs.** Judgment must be entered in the judgment book as in other cases but without costs for any proceeding prior to the trial.

**History: En. Sec. 300, p. 106, Bannack Stat.; re-en. Sec. 356, p. 207, L. 1867; re-en. Sec. 430, p. 121, Cod. Stat. 1871; re-en. Sec. 456, p. 163, L. 1877; re-en. Sec. 456, 1st Div. Rev. Stat. 1879; re-en. Sec. 469, 1st Div. Comp. Stat. 1887; re-en. Sec. 2051, C. Civ. Proc. 1895; re-en. Sec. 7255, Rev. C. 1907; re-en. Sec. 9873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1139; re-en. Sec. 9873, R.C.M. 1935; R.C.M. 1947, 93-9502; amd. Sec. 31, Ch. 12, L. 1979.**

**27-7-104. Enforcement of judgment — appeal.** The judgment may be enforced in the same manner as if it had been rendered in an action and is in the same manner subject to appeal.

**History: En. Sec. 301, p. 106, Bannack Stat.; re-en. Sec. 357, p. 207, L. 1867; re-en. Sec. 431, p. 121, Cod. Stat. 1871; re-en. Sec. 457, p. 163, L. 1877; re-en. Sec. 457, 1st Div. Rev. Stat. 1879; re-en. Sec. 470, 1st Div. Comp. Stat. 1887; re-en. Sec. 2052, C. Civ. Proc. 1895; re-en. Sec. 7256, Rev. C. 1907; re-en. Sec. 9874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1140; re-en. Sec. 9874, R.C.M. 1935; R.C.M. 1947, 93-9503.**

**Cross-References**

Trial upon agreed statement of facts, 25-7-602.

# CHAPTER 8
# UNIFORM DECLARATORY JUDGMENTS ACT

### Part 1 — General Provisions

27-8-101. Short title.
27-8-102. Purpose — liberal construction.
27-8-103. Uniformity of interpretation.
27-8-104. Definition of person.

### Part 2 — Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments.
27-8-202. Who may obtain declaratory judgment.
27-8-203. When contract may be construed.
27-8-204. Declarations concerning administration of trusts and estates.
27-8-205. Enumeration not restrictive of general powers.
27-8-206. Court's discretion to refuse to render judgment.

### Part 3 — Procedure

27-8-301. Necessary parties.
27-8-302. Jury trial.
27-8-303 through 27-8-310 reserved.
27-8-311. Costs.
27-8-312. Review of orders and judgments.
27-8-313. Supplemental relief.

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## Part 1
## General Provisions

**27-8-101. Short title.** This chapter may be cited as the "Uniform Declaratory Judgments Act".

**History: En. Sec. 16, Ch. 16, L. 1935; re-en. Sec. 9835.16, R.C.M. 1935; R.C.M. 1947, 93-8916.**

**27-8-102. Purpose — liberal construction.** This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

**History: En. Sec. 12, Ch. 16, L. 1935; re-en. Sec. 9835.12, R.C.M. 1935; R.C.M. 1947, 93-8912.**

**27-8-103. Uniformity of interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

**History: En. Sec. 15, Ch. 16, L. 1935; re-en. Sec. 9835.15, R.C.M. 1935; R.C.M. 1947, 93-8915.**

**27-8-104. Definition of person.** The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, joint-stock company, unincorporated association, or society or municipal or other corporation of any character whatsoever.

**History: En. Sec. 13, Ch. 16, L. 1935; re-en. Sec. 9835.13, R.C.M. 1935; R.C.M. 1947, 93-8913.**

## Part 2
## Availability of Declaratory Judgments

**27-8-201. Scope of power to render declaratory judgments.** Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

**History: En. Sec. 1, Ch. 16, L. 1935; re-en. Sec. 9835.1, R.C.M. 1935; R.C.M. 1947, 93-8901.**

**27-8-202. Who may obtain declaratory judgment.** Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

**History: En. Sec. 2, Ch. 16, L. 1935; re-en. Sec. 9835.2, R.C.M. 1935; R.C.M. 1947, 93-8902.**

**27-8-203. When contract may be construed.** A contract may be construed either before or after there has been a breach thereof.

**History: En. Sec. 3, Ch. 16, L. 1935; re-en. Sec. 9835.3, R.C.M. 1935; R.C.M. 1947, 93-8903.**

**27-8-204. Declarations concerning administration of trusts and estates.** A person interested as or through an executor, administrator, trustee, guardian, other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent, minor, person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal relations:

(1) to ascertain any class of creditors, devisees, heirs, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing a particular act in their fiduciary capacity; or

(3) to determine a question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

**History: En. Sec. 4, Ch. 16, L. 1935; re-en. Sec. 9835.4, R.C.M. 1935; R.C.M. 1947, 93-8904; amd. Sec. 32, Ch. 12, L. 1979; amd. Sec. 5, Ch. 490, L. 1997.**

**27-8-205. Enumeration not restrictive of general powers.** The enumeration in 27-8-202 through 27-8-204 does not limit or restrict the exercise of the general powers conferred in 27-8-201 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

**History: En. Sec. 5, Ch. 16, L. 1935; re-en. Sec. 9835.5, R.C.M. 1935; R.C.M. 1947, 93-8905.**

**27-8-206. Court's discretion to refuse to render judgment.** The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

**History: En. Sec. 6, Ch. 16, L. 1935; re-en. Sec. 9835.6, R.C.M. 1935; R.C.M. 1947, 93-8906.**

## Part 3
## Procedure

**27-8-301. Necessary parties.** When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

**History: En. Sec. 11, Ch. 16, L. 1935; re-en. Sec. 9835.11, R.C.M. 1935; R.C.M. 1947, 93-8911.**

**27-8-302. Jury trial.** (1) When a proceeding under this chapter involves the determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(2) When a proceeding under this chapter challenges the constitutionality or other illegality of a legislative act or a proposed or adopted ballot issue, as defined in 13-1-101, and that proceeding involves the determination of an issue of fact, any party to the proceeding is entitled to a trial by jury on a determination of an issue of fact that is in dispute.

**History: En. Sec. 9, Ch. 16, L. 1935; re-en. Sec. 9835.9, R.C.M. 1935; R.C.M. 1947, 93-8909; amd. Sec. 2, Ch. 680, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 680, L. 2025. Amendment effective May 13, 2025.

*Applicability:* Section 5, Ch. 680, L. 2025, provided: "[This act] applies to proceedings under [this act] for which a party to a civil action has demanded a jury trial on or after [the effective date of this act]." Effective May 13, 2025.

**Cross-References**

Trial jury right in constitutional challenges, 3-15-901.

**27-8-303 through 27-8-310 reserved.**

**27-8-311. Costs.** In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

**History: En. Sec. 10, Ch. 16, L. 1935; re-en. Sec. 9835.10, R.C.M. 1935; R.C.M. 1947, 93-8910.**

**27-8-312. Review of orders and judgments.** All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

**History: En. Sec. 7, Ch. 16, L. 1935; re-en. Sec. 9835.7, R.C.M. 1935; R.C.M. 1947, 93-8907.**

**27-8-313. Supplemental relief.** Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by a declaratory judgment or decree to show cause why further relief should not be granted forthwith.

**History: En. Sec. 8, Ch. 16, L. 1935; re-en. Sec. 9835.8, R.C.M. 1935; R.C.M. 1947, 93-8908.**

# CHAPTER 9
# CONFESSION OF JUDGMENT

### Part 1 — General Provisions

27-9-101. When and in what courts judgment may be confessed.
27-9-102. Requirement of signed, verified statement by defendant.
27-9-103. Filing and costs — district court.
27-9-104. Filing and costs — justice's court.

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## Part 1
## General Provisions

**27-9-101. When and in what courts judgment may be confessed.** Subject to 28-2-709, a judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession, as provided in this chapter.

**History: Ap. p. Sec. 297, p. 105, Bannack Stat.; re-en. Sec. 352, p. 206, L. 1867; re-en. Sec. 426, p. 120, Cod. Stat. 1871; amd. Sec. 452, p. 162, L. 1877; re-en. Sec. 452, 1st Div. Rev. Stat. 1879; re-en. Sec. 465, 1st Div. Comp. Stat. 1887; re-en. Sec. 2040, C. Civ. Proc. 1895; re-en. Sec. 7250, Rev. C. 1907; re-en. Sec. 9868, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1132; re-en. Sec. 9868, R.C.M. 1935; Sec. 93-9401, R.C.M. 1947; Ap. p. Sec. 1620, C. Civ. Proc. 1895; re-en. Sec. 7046, Rev. C. 1907; re-en. Sec. 9679, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 889; re-en. Sec. 9679, R.C.M. 1935; Sec. 93-7301, R.C.M. 1935; R.C.M. 1947, 93-7301, 93-9401; amd. Sec. 33, Ch. 12, L. 1979.**

**Cross-References**

Agreements for confession of judgments void, 28-2-709.

**27-9-102. Requirement of signed, verified statement by defendant.** A statement in writing must be made, signed by the defendant, and verified by the defendant's oath to the following effect:

(1) It must authorize the entry of judgment for a specified sum.

(2) If it is for money due or to become due, it must state concisely the facts out of which it arose and show that the sum confessed is justly due or to become due.

(3) If it is for the purpose of securing the plaintiff against contingent liability, it must state concisely the facts constituting the liability and show that the sum confessed does not exceed the contingent liability.

**History: En. Sec. 298, p. 105, Bannack Stat.; amd. Sec. 353, p. 206, L. 1867; re-en. Sec. 427, p. 120, Cod. Stat. 1871; re-en. Sec. 453, p. 162, L. 1877; re-en. Sec. 453, 1st Div. Rev. Stat. 1879; re-en. Sec. 466, 1st Div. Comp. Stat. 1887; re-en. Sec. 2041, C. Civ. Proc. 1895; re-en. Sec. 7251, Rev. C. 1907; re-en. Sec. 9869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1133; re-en. Sec. 9869, R.C.M. 1935; R.C.M. 1947, 93-9402; amd. Sec. 618, Ch. 56, L. 2009.**

**27-9-103. Filing and costs — district court.** The statement must be filed with the clerk of court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of the court for the amount confessed, with $45 costs. The clerk of district court shall forward the costs to the department of revenue for deposit in the state general fund.

**History: En. Sec. 354, p. 206, L. 1867; re-en. Sec. 428, p. 120, Cod. Stat. 1871; re-en. Sec. 454, p. 162, L. 1877; re-en. Sec. 454, 1st Div. Rev. Stat. 1879; re-en. Sec. 467, 1st Div. Comp. Stat. 1887; amd. Sec. 2042, C. Civ. Proc. 1895; re-en. Sec. 7252, Rev. C. 1907; re-en. Sec. 9870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1134; re-en. Sec. 9870, R.C.M. 1935; R.C.M. 1947, 93-9403; amd. Sec. 34, Ch. 12, L. 1979; amd. Sec. 2, Ch. 221, L. 1989; amd. Sec. 1, Ch. 153, L. 1995; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 31, Ch. 585, L. 2001.**

**27-9-104. Filing and costs — justice's court.** In a justice's court that has authority to enter the judgment, the statement may be filed with the justice, who shall enter in the docket a judgment of the justice's court for the amount confessed, with costs. If a transcript of the judgment is filed with the clerk of the district court, a copy of the statement must be filed with it.

**History: En. Sec. 2043, C. Civ. Proc. 1895; re-en. Sec. 7253, Rev. C. 1907; re-en. Sec. 9871, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1135; re-en. Sec. 9871, R.C.M. 1935; R.C.M. 1947, 93-9404; amd. Sec. 35, Ch. 12, L. 1979; amd. Sec. 619, Ch. 56, L. 2009.**

## CHAPTERS 10 AND 11
## RESERVED

## CHAPTER 12
## MONTANA CHIROPRACTIC LEGAL PANEL ACT

### Part 1 — General Provisions

27-12-101. Short title.
27-12-102. Purpose.
27-12-103. Definitions.
27-12-104. Creation of panel.
27-12-105. What claims panel to review.
27-12-106. Immunity of panel members and witnesses from civil liability.

### Part 2 — Administration of Act

27-12-201. Appointment, term, and salary of director.
27-12-202. Employment of staff and maintenance of offices.
27-12-203. Compensation of panel members and staff.
27-12-204. Authority to adopt rules.
27-12-205. Powers of panel.
27-12-206. Funding.
27-12-207. Panel audits.

### Part 3 — Preliminary Procedure

27-12-301. How cases submitted — no court action before application.
27-12-302. Content of application — waiver of confidentiality of medical records.
27-12-303. Amendments to application.
27-12-304. Copies of application to professional societies when vicarious liability claimed.
27-12-305. Service on chiropractic physician.
27-12-306. Chiropractic physician's appearance and answer — waiver of confidentiality of records.
27-12-307. Assistance to claimant in obtaining expert consultation.
27-12-308. Director to furnish panel members with documents.

### Part 4 — Formation and Composition of Panel

27-12-401. Composition of panel.
27-12-402. Selection of panelists.
27-12-403. Panel in cases involving multiple defendants.
27-12-404. Disqualification of panel member.

### Part 5 — Hearing Procedure

27-12-501. Time and place of hearing.
27-12-502. Conduct of hearing.
27-12-503. Conclusion of hearing — supplemental hearing.

### Part 6 — Deliberations and Decision of Panel

27-12-601. Selection of presiding officer.
27-12-602. Questions panel must decide.
27-12-603. Deliberations to be secret — voting.
27-12-604. Form and content of decision.
27-12-605. Decision to be filed and copies sent to parties and attorneys.
27-12-606. Decision not binding — settlement agreements.

### Part 7 — Effect of Proceedings in Court Action — Confidentiality

27-12-701. Tolling of statute of limitations.
27-12-702. Records of proceedings — confidentiality.
27-12-703. Panel proceedings and decision privileged from disclosure in court actions.

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**Chapter Cross-References**

Board of Chiropractors established, 2-15-1737.
Periodic payment of damages — medical malpractice damage limitations, Title 25, ch. 9, part 4.
Statutes of limitations — actions for medical malpractice, 27-2-205.
Montana Medical Legal Panel Act, Title 27, ch. 6.
Investigation of complaints, 37-12-322.

## Part 1
## General Provisions

**27-12-101. Short title.** This chapter may be cited as the "Montana Chiropractic Legal Panel Act".

**History:** **En. Sec. 1, Ch. 262, L. 1989.**

**27-12-102. Purpose.** The purpose of this chapter is to:

(1) prevent, whenever possible, filed court actions against chiropractic physicians and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

(2) make possible the fair and equitable disposition of such claims against chiropractic physicians as are or reasonably may be well founded.

**History:** **En. Sec. 2, Ch. 262, L. 1989.**

**27-12-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under 27-12-206, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has the individual's principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had the individual's principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in 27-12-104.

**History: En. Sec. 3, Ch. 262, L. 1989; amd. Sec. 620, Ch. 56, L. 2009.**

**Cross-References**

Montana Professional Corporation Act, Title 35, ch. 4.

**27-12-104. Creation of panel.** There is a Montana chiropractic legal panel. The panel is a quasi-governmental entity and is allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply. The only state laws applicable to the panel are those contained in this chapter and those laws specifically made applicable to the panel.

**History: En. Sec. 4, Ch. 262, L. 1989; amd. Sec. 1, Ch. 175, L. 2003; amd. Sec. 1, Ch. 199, L. 2005.**

**27-12-105. What claims panel to review.** The panel shall review all malpractice claims or potential claims against chiropractic physicians covered by this chapter, except claims subject to a valid arbitration agreement allowed by law.

**History: En. Sec. 5, Ch. 262, L. 1989.**

**Cross-References**

Uniform Arbitration Act, Title 27, ch. 5.

**27-12-106. Immunity of panel members and witnesses from civil liability.** Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this chapter.

**History: En. Sec. 6, Ch. 262, L. 1989.**

## Part 2
## Administration of Act

**27-12-201. Appointment, term, and salary of director.** The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

**History: En. Sec. 7, Ch. 262, L. 1989.**

**27-12-202. Employment of staff and maintenance of offices.** (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants that the director considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

**History: En. Sec. 8, Ch. 262, L. 1989; amd. Sec. 621, Ch. 56, L. 2009.**

**Cross-References**

Public records, Title 2, ch. 6.

**27-12-203. Compensation of panel members and staff.** (1) Each member of the panel must be paid a salary of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and the director's staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve the expenses before payment is made.

**History: En. Sec. 9, Ch. 262, L. 1989; amd. Sec. 622, Ch. 56, L. 2009.**

**27-12-204. Authority to adopt rules.** The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the panel. Rules may not be adopted that require a party to make a monetary payment as a condition of bringing a malpractice claim before the chiropractic review panel.

**History: En. Sec. 10, Ch. 262, L. 1989.**

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**27-12-205. Powers of panel.** The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by rules adopted by the director, the issuance of subpoenas, and the performance of all other acts required to fairly and effectively administer this chapter.

**History: En. Sec. 11, Ch. 262, L. 1989.**

**27-12-206. Funding.** (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under 37-1-134 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under 37-1-134 with regard to a chiropractic physician's annual license fee. However, nothing in this section may be interpreted to conflict with 37-1-138.

**History: En. Sec. 12, Ch. 262, L. 1989; amd. Sec. 1, Ch. 47, L. 1993; amd. Sec. 47, Ch. 509, L. 1995; amd. Sec. 1, Ch. 5, L. 2001; amd. Sec. 61, Ch. 483, L. 2001; amd. Sec. 4, Ch. 271, L. 2003; amd. Sec. 4, Ch. 467, L. 2005.**

**27-12-207. Panel audits.** (1) The panel and fund may be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and 5-13-309. Any audit that is conducted by the legislative auditor or approved by the legislative auditor under 5-13-411 must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

**History: En. Sec. 13, Ch. 262, L. 1989; amd. Sec. 1, Ch. 165, L. 2019.**

## Part 3
## Preliminary Procedure

**27-12-301. How cases submitted — no court action before application.** A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or the claimant's attorney, to the director of the panel.

**History:** **En. Sec. 14, Ch. 262, L. 1989; amd. Sec. 623, Ch. 56, L. 2009.**

**Cross-References**

Administration of justice, Art. II, sec. 16, Mont. Const.
Due process of law, Art. II, sec. 17, Mont. Const.

**27-12-302. Content of application — waiver of confidentiality of medical records.** The application must contain a statement:

(1) in reasonable detail of the elements of the chiropractic physician's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all witnesses, chiropractic and other physicians, and hospitals having contact with the claimant; and

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving any privilege for any other purpose or in any other context, in or out of court.

**History:** **En. Sec. 15, Ch. 262, L. 1989.**

**27-12-303. Amendments to application.** Amendments to an application may be made in the manner authorized by rule.

**History:** **En. Sec. 16, Ch. 262, L. 1989.**

**Cross-References**

Authority to adopt rules, 27-12-204.

**27-12-304. Copies of application to professional societies when vicarious liability claimed.** If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of the application to the state professional society, association, or licensing board of both the individual chiropractic physician whose alleged malpractice caused the application to be filed and the chiropractic physician named a defendant as employer, master, or principal.

**History:** **En. Sec. 17, Ch. 262, L. 1989.**

**Cross-References**

Board of Chiropractors, Title 37, ch. 12, part 2.

**27-12-305. Service on chiropractic physician.** Upon receipt of an application, the director or the director's delegate shall serve a copy of the application on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at the chiropractic physician's last-known address, postage prepaid, by certified mail, return receipt requested.

**History:** **En. Sec. 18, Ch. 262, L. 1989; amd. Sec. 624, Ch. 56, L. 2009.**

**27-12-306. Chiropractic physician's appearance and answer — waiver of confidentiality of records.** (1) If a chiropractic physician whose alleged malpractice caused the application to be filed chooses to retain legal counsel, the chiropractic physician's attorney shall informally enter an appearance with the director.

(2) The chiropractic physician shall answer the application and submit a statement authorizing the panel to inspect all medical, chiropractic, and hospital records and information pertaining to the application and, for the purposes of panel inspection only, waiving any privilege as to the content of those records. Nothing in the statement waives any privilege for any other purpose.

**History:** **En. Sec. 19, Ch. 262, L. 1989; amd. Sec. 2, Ch. 5, L. 2001.**

**Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.
Records of proceedings — confidentiality, 27-12-702.
Uniform health care information, Title 50, ch. 16, part 5.

**27-12-307. Assistance to claimant in obtaining expert consultation.** The director shall cooperate fully with the claimant in retaining as an expert consultant a chiropractic physician qualified in the field of chiropractic.

**History:** **En. Sec. 20, Ch. 262, L. 1989.**

**27-12-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall give each panel member copies of all claims, all briefs, all chiropractic, medical, or hospital records, and all other documents that the director considers necessary.

**History:** **En. Sec. 21, Ch. 262, L. 1989; amd. Sec. 3, Ch. 5, L. 2001.**

## Part 4
## Formation and Composition of Panel

**27-12-401. Composition of panel.** Those eligible to sit on the panel are chiropractic physicians licensed under Montana law and residing in Montana and attorneys who are members of the state bar of Montana. Three panel members who are chiropractic physicians and three panel members who are attorneys shall sit in review of each case.

**History:** **En. Sec. 22, Ch. 262, L. 1989.**

**Cross-References**

Licensing of chiropractic practitioners, Title 37, ch. 12.
Licensing of attorneys, Title 37, ch. 61.

**27-12-402. Selection of panelists.** The board of chiropractors and the director of the state bar of Montana shall each annually transmit a list of licensees to the director of the panel. Within 14 days from the date of transmittal of a list, the director shall select 12 proposed panelists from the list. The director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.

**History:** **En. Sec. 23, Ch. 262, L. 1989; amd. Sec. 2, Ch. 199, L. 2005.**

**27-12-403. Panel in cases involving multiple defendants.** If there are multiple defendants, the case against each may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all defendants.

**History:** **En. Sec. 24, Ch. 262, L. 1989.**

**27-12-404. Disqualification of panel member.** (1) A panel member or proposed member must be disqualified from consideration of a case in which, by virtue of the member's circumstances, the member believes that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that the party believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under 27-12-402, of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member.

**History:** **En. Sec. 25, Ch. 262, L. 1989; amd. Sec. 625, Ch. 56, L. 2009.**

## Part 5
## Hearing Procedure

**Part Cross-References**

Due process of law, Art. II, sec. 17, Mont. Const.

**27-12-501. Time and place of hearing.** (1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

**History:** **En. Sec. 26, Ch. 262, L. 1989.**

**27-12-502. Conduct of hearing.** (1) At the time set for hearing, the claimant must be present and give a brief statement of the claimant's case, including the facts constituting the alleged professional malpractice that the claimant is prepared to prove. The chiropractic physician against whom the claim is brought and the chiropractic physician's attorney may be present and may make an introductory statement of the chiropractic physician's case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical and chiropractic texts, journals, studies, and other documentary evidence relied upon by a party may be offered and admitted if relevant. Written statements of facts by treating chiropractic physicians may be reviewed.

(3) The hearing is informal, and an official transcript may not be made.

**History:** **En. Sec. 27, Ch. 262, L. 1989; amd. Sec. 4, Ch. 5, L. 2001.**

**27-12-503. Conclusion of hearing — supplemental hearing.** (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or the claimant's attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present.

**History:** **En. Sec. 28, Ch. 262, L. 1989; amd. Sec. 626, Ch. 56, L. 2009.**

## Part 6
## Deliberations and Decision of Panel

**27-12-601. Selection of presiding officer.** At or prior to the time set for the hearing, the attorney members of the panel shall select a presiding officer, who must be an attorney.

**History:** **En. Sec. 29, Ch. 262, L. 1989; amd. Sec. 627, Ch. 56, L. 2009.**

**27-12-602. Questions panel must decide.** Upon consideration of all relevant evidence, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

**History:** **En. Sec. 30, Ch. 262, L. 1989.**

**27-12-603. Deliberations to be secret — voting.** The deliberations of the panel are confidential. Each vote of the panel on a question for discussion must be by secret ballot. The decision must be by a majority vote of those voting members of the panel who sat during the case.

**History:** **En. Sec. 31, Ch. 262, L. 1989.**

**27-12-604. Form and content of decision.** (1) The decision must:

(a) be in writing and signed by the presiding officer;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement.

**History:** **En. Sec. 32, Ch. 262, L. 1989; amd. Sec. 628, Ch. 56, L. 2009.**

**27-12-605. Decision to be filed and copies sent to parties and attorneys.** A copy of the decision must be given to the parties and their attorneys and retained in the permanent files of the panel.

**History:** **En. Sec. 33, Ch. 262, L. 1989; amd. Sec. 3, Ch. 199, L. 2005; amd. Sec. 2, Ch. 286, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 286, L. 2025. Amendment effective October 1, 2025.

**27-12-606. Decision not binding — settlement agreements.** The panel's decision is without administrative or judicial authority and is not binding upon a party. The panel may recommend an award or approve a settlement agreement. An approved settlement agreement is binding on the parties.

**History:** **En. Sec. 34, Ch. 262, L. 1989.**

## Part 7
## Effect of Proceedings in Court Action — Confidentiality

**27-12-701. Tolling of statute of limitations.** (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refiling, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or the complainant's attorney.

**History:** **En. Sec. 35, Ch. 262, L. 1989; amd. Sec. 629, Ch. 56, L. 2009.**

**Cross-References**

Statute of limitations — medical malpractice, 27-2-205.

**27-12-702. Records of proceedings — confidentiality.** The director shall maintain records of all proceedings before the panel. The record must include the nature of the act or omission complained of, a brief summary of the evidence, the decision of the panel, and any majority or dissenting opinions filed. Records that identify a party to the proceedings may not be made public, are not subject to subpoena, and may be used only to compile statistical data and facilitate studies of medical malpractice in Montana.

**History:** **En. Sec. 36, Ch. 262, L. 1989.**

**Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Appearance and answer — waiver of confidentiality of records, 27-12-306.

**27-12-703. Panel proceedings and decision privileged from disclosure in court actions.** (1) A panel member must not be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) A decision of the panel is not admissible as evidence in an action subsequently brought in a court of law.

**History:** **En. Sec. 37, Ch. 262, L. 1989.**

# CHAPTERS 13 AND 14
# RESERVED

# CHAPTER 15
# PROVISIONAL REMEDIES

### Part 1 — General Provisions

27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment.
27-15-102. Availability of provisional remedies to defendant interposing counterclaim.
27-15-103. Time limit on decisions regarding arrest, injunction, or attachment.

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## Part 1
## General Provisions

**27-15-101. When plaintiff may be required to elect among arrest, injunction, and attachment.** When an application for an order of arrest, injunction order, and writ of attachment or two of them is made in the same action against the same defendant and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in the court's or judge's discretion, require the plaintiff to elect between them.

**History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part); amd. Sec. 630, Ch. 56, L. 2009.**

**27-15-102. Availability of provisional remedies to defendant interposing counterclaim.** Whenever the defendant interposes a counterclaim and demands an affirmative judgment against the plaintiff, the defendant's right to a provisional remedy is the same as it would be in an action brought by the defendant against the plaintiff for the cause of action stated in the counterclaim and demanding the same judgment. For the purpose of applying the provisions of Title 25, chapter 8, and Title 27, chapters 15 through 20, to a case involving a counterclaim, the defendant is considered the plaintiff, the plaintiff is considered the defendant, and the counterclaim set forth in the answer is considered the complaint.

**History: En. Sec. 981, C. Civ. Proc. 1895; re-en. Sec. 6709, Rev. C. 1907; re-en. Sec. 9312, R.C.M. 1921; re-en. Sec. 9312, R.C.M. 1935; R.C.M. 1947, 93-4602; amd. Sec. 36, Ch. 12, L. 1979; amd. Sec. 631, Ch. 56, L. 2009.**

**27-15-103. Time limit on decisions regarding arrest, injunction, or attachment.** Where an application is made to obtain, vacate, modify, or set aside an order of arrest, injunction order, or writ of attachment, the court or judge must finally decide the same within 20 days after it is submitted for decision.

**History: En. Sec. 980, C. Civ. Proc. 1895; re-en. Sec. 6708, Rev. C. 1907; re-en. Sec. 9311, R.C.M. 1921; re-en. Sec. 9311, R.C.M. 1935; R.C.M. 1947, 93-4601(part).**

## CHAPTER 16

## ARREST AND BAIL IN CIVIL ACTIONS

### Part 1 — General Provisions

27-16-101. Exclusive procedure for prejudgment arrest in civil action.
27-16-102. When defendant may be arrested.

### Part 2 — Order for Arrest — Execution

27-16-201. Order from judge required.
27-16-202. Time for making order.
27-16-203. When order must be made.
27-16-204. Plaintiff's undertaking.
27-16-205. Affidavits of sureties — filing of undertaking.
27-16-206. Directions to sheriff in order.
27-16-207. Service of order and affidavit.
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27-16-209. Liability of sheriff for escape or rescue.
27-16-210. Recovery on sheriff's official bond.

### Part 3 — Vacation of Order — Reduction of Bail

27-16-301. Proceedings to vacate order or reduce bail.
27-16-302. When order vacated or bail reduced.

### Part 4 — Giving Bail

27-16-401. Discharge of defendant upon giving bail before execution.
27-16-402. Form of undertaking for bail.
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### Part 5 — Liability and Exoneration of Sureties

27-16-501. Surrender of defendant.
27-16-502. Manner and time of surrender.
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### Part 6 — Deposit of Money in Lieu of Bail

27-16-601. Deposit of money by defendant with sheriff.
27-16-602. Sheriff to pay money into court — certificates of payment.
27-16-603. Substituting bail for deposit.
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### Part 7 reserved

**Part 8 — Immigration Detainer Request Arrests**
27-16-801. Immigration detainer requests — arrest authority and duty to arrest.

**Part 9 reserved**

**Part 10 — Arrest in Civil Actions in Justice's Court**
27-16-1001. Justice's authority to order arrest.
27-16-1002. Plaintiff's affidavit and undertaking.
27-16-1003. Defendant to be taken before justice immediately.
27-16-1004. Notice to plaintiff of arrest — officer's certificate.
27-16-1005. Officer to detain defendant — expenses.
27-16-1006. Defense against order of arrest.

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**Chapter Cross-References**

Bail — criminal, Title 46, ch. 9.

## Part 1
## General Provisions

**27-16-101. Exclusive procedure for prejudgment arrest in civil action.** No person may be arrested before judgment in a civil action except as prescribed by this chapter.

**History: En. Sec. 72, p. 148, L. 1867; re-en. Sec. 80, p. 44, Cod. Stat. 1871; re-en. Sec. 118, p. 68, L. 1877; re-en. Sec. 118, 1st Div. Rev. Stat. 1879; re-en. Sec. 120, 1st Div. Comp. Stat. 1887; re-en. Sec. 800, C. Civ. Proc. 1895; re-en. Sec. 6595, Rev. C. 1907; re-en. Sec. 9193, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 478; re-en. Sec. 9193, R.C.M. 1935; R.C.M. 1947, 93-4001; amd. Sec. 37, Ch. 12, L. 1979.**

**27-16-102. When defendant may be arrested.** The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state with intent to defraud the defendant's creditors;

(2) in an action for willful injury to person or character or to property that the defendant knew belonged to another;

(3) in an action:

(a) for a fine or penalty or for money or property fraudulently misapplied or converted to the defendant's own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of employment, or by any other person in a fiduciary capacity;

(b) for misconduct or neglect in office or in a professional employment; or

(c) for a willful violation of duty;

(4) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

(6) when the defendant has removed or disposed of the defendant's property or is about to do so with intent to defraud the defendant's creditors.

**History: En. Sec. 73, p. 148, L. 1867; re-en. Sec. 81, p. 44, Cod. Stat. 1871; re-en. Sec. 119, p. 68, L. 1877; re-en. Sec. 119, 1st Div. Rev. Stat. 1879; re-en. Sec. 121, 1st Div. Comp. Stat. 1887; re-en. Sec. 801, C. Civ. Proc. 1895; re-en. Sec. 6596, Rev. C. 1907; re-en. Sec. 9194, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 479; re-en. Sec. 9194, R.C.M. 1935; amd. Sec. 69, Ch. 359, L. 1977; R.C.M. 1947, 93-4002; amd. Sec. 38, Ch. 12, L. 1979; amd. Sec. 632, Ch. 56, L. 2009.**

**Cross-References**

Standards of conduct for public officials, Title 2, ch. 2.
Contracts — interpretation, Title 28, ch. 2, and 3.
Actual and constructive fraud, 28-2-404 through 28-2-406.
Uniform Fraudulent Transfer Act, Title 31, ch. 2, part 3.
Fellow employee — liability for malicious act or omission, 39-71-413.

## Part 2
## Order for Arrest — Execution

**27-16-201. Order from judge required.** An order for the arrest of the defendant must be obtained from the judge of the court in which the action is brought.

**History:** **En. Sec. 74, p. 148, L. 1867; re-en. Sec. 82, p. 44, Cod. Stat. 1871; re-en. Sec. 120, p. 68, L. 1877; re-en. Sec. 120, 1st Div. Rev. Stat. 1879; re-en. Sec. 122, 1st Div. Comp. Stat. 1887; re-en. Sec. 802, C. Civ. Proc. 1895; re-en. Sec. 6597, Rev. C. 1907; re-en. Sec. 9195, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 480; re-en. Sec. 9195, R.C.M. 1935; R.C.M. 1947, 93-4003.**

**27-16-202. Time for making order.** The order may be made at the time of issuing the summons or at any time afterwards before judgment.

**History:** **En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part).**

**27-16-203. When order must be made.** The order must be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists and that the case is one of those mentioned in 27-16-102.

**History:** **En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part).**

**27-16-204. Plaintiff's undertaking.** Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that, if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant and all damages that the defendant may sustain by reason of the arrest, if the arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking, which must be at least $500.

**History:** **En. Secs. 75, 76, p. 148, L. 1867; re-en. Sec. 83, p. 44, Cod. Stat. 1871; re-en. Sec. 121, p. 69, L. 1877; re-en. Sec. 121, 1st Div. Rev. Stat. 1879; re-en. Sec. 123, 1st Div. Comp. Stat. 1887; amd. Sec. 803, C. Civ. Proc. 1895; re-en. Sec. 6598, Rev. C. 1907; re-en. Sec. 9196, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 481, 482; re-en. Sec. 9196, R.C.M. 1935; R.C.M. 1947, 93-4004(part); amd. Sec. 633, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-16-205. Affidavits of sureties — filing of undertaking.** Each of the sureties shall annex to the undertaking an affidavit that the surety is a resident and householder or freeholder within the state and worth double the sum specified in the undertaking, over and above all the surety's debts and liabilities, exclusive of property exempt from execution. The undertaking must be filed with the clerk of the court.

**History:** **En. Sec. 76, p. 148, L. 1867; re-en. Sec. 84, p. 44, Cod. Stat. 1871; re-en. Sec. 122, p. 69, L. 1877; re-en. Sec. 122, 1st Div. Rev. Stat. 1879; re-en. Sec. 124, 1st Div. Comp. Stat. 1887; re-en. Sec. 804, C. Civ. Proc. 1895; re-en. Sec. 6599, Rev. C. 1907; re-en. Sec. 9197, R.C.M. 1921; re-en. Sec. 9197, R.C.M. 1935; R.C.M. 1947, 93-4005; amd. Sec. 634, Ch. 56, L. 2009.**

**27-16-206. Directions to sheriff in order.** The order must require the sheriff of the county where the defendant may be found to arrest the defendant and hold the defendant to bail in a specified sum and to return the order at a time specified in the order to the clerk of the court in which the action is pending.

**History:** **En. Sec. 77, p. 148, L. 1867; re-en. Sec. 85, p. 44, Cod. Stat. 1871; re-en. Sec. 123, p. 69, L. 1877; re-en. Sec. 123, 1st Div. Rev. Stat. 1879; re-en. Sec. 125, 1st Div. Comp. Stat. 1887; re-en. Sec. 805, C. Civ. Proc. 1895; re-en. Sec. 6600, Rev. C. 1907; re-en. Sec. 9198, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 483; re-en. Sec. 9198, R.C.M. 1935; R.C.M. 1947, 93-4006(part); amd. Sec. 635, Ch. 56, L. 2009.**

**27-16-207. Service of order and affidavit.** The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff who, upon arresting the defendant, shall deliver the defendant a copy of the affidavit and also, if the defendant desires, a copy of the order of arrest.

**History:** **En. Sec. 78, p. 149, L. 1867; re-en. Sec. 86, p. 45, Cod. Stat. 1871; re-en. Sec. 124, p. 69, L. 1877; re-en. Sec. 124, 1st Div. Rev. Stat. 1879; re-en. Sec. 126, 1st Div. Comp. Stat. 1887; re-en. Sec. 806, C. Civ. Proc. 1895; re-en. Sec. 6601, Rev. C. 1907; re-en. Sec. 9199, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 484; re-en. Sec. 9199, R.C.M. 1935; R.C.M. 1947, 93-4007; amd. Sec. 636, Ch. 56, L. 2009.**

**27-16-208. Execution of order — prepayment of expense by plaintiff.** The sheriff shall execute the order by arresting the defendant and keeping the defendant in custody until discharged by law. However, the sheriff is not bound to keep the defendant under arrest more than 24 hours unless the plaintiff advances each day the expense of keeping the defendant. The expenses must be taxed as costs in the action and may not be a charge against the county.

**History: En. Sec. 79, p. 149, L. 1867; en. Sec. 87, p. 45, Cod. Stat. 1871; re-en. Sec. 125, p. 69, L. 1877; re-en. Sec. 125, 1st Div. Rev. Stat. 1879; re-en. Sec. 127, 1st Div. Comp. Stat. 1887; re-en. Sec. 807, C. Civ. Proc. 1895; re-en. Sec. 6602, Rev. C. 1907; re-en. Sec. 9200, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 485; re-en. Sec. 9200, R.C.M. 1935; R.C.M. 1947, 93-4008; amd. Sec. 637, Ch. 56, L. 2009.**

**27-16-209. Liability of sheriff for escape or rescue.** If after being arrested the defendant escapes or is rescued, the sheriff is liable as bail, but the sheriff may be discharged from liability by the giving justification of bail at any time before judgment.

**History: En. Sec. 95, p. 151, L. 1867; re-en. Sec. 103, p. 48, Cod. Stat. 1871; re-en. Sec. 141, p. 73, L. 1877; re-en. Sec. 141, 1st Div. Rev. Stat. 1879; re-en. Sec. 143, 1st Div. Comp. Stat. 1887; re-en. Sec. 823, C. Civ. Proc. 1895; re-en. Sec. 6618, Rev. C. 1907; re-en. Sec. 9216, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 501; re-en. Sec. 9216, R.C.M. 1935; R.C.M. 1947, 93-4024; amd. Sec. 638, Ch. 56, L. 2009.**

**Cross-References**

Liability for escape in civil actions, 7-32-2250.

**27-16-210. Recovery on sheriff's official bond.** If a judgment is recovered against the sheriff upon the sheriff's liability as bail and an execution is returned unsatisfied in whole or in part, the same proceeding may be had on the sheriff's official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

**History: En. Sec. 96, p. 151, L. 1867; re-en. Sec. 104, p. 48, Cod. Stat. 1871; re-en. Sec. 142, p. 73, L. 1877; re-en. Sec. 142, 1st Div. Rev. Stat. 1879; re-en. Sec. 144, 1st Div. Comp. Stat. 1887; re-en. Sec. 824, C. Civ. Proc. 1895; re-en. Sec. 6619, Rev. C. 1907; re-en. Sec. 9217, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 502; re-en. Sec. 9217, R.C.M. 1935; R.C.M. 1947, 93-4025; amd. Sec. 639, Ch. 56, L. 2009.**

## Part 3
## Vacation of Order — Reduction of Bail

**27-16-301. Proceedings to vacate order or reduce bail.** A defendant arrested may, at any time before justification of bail, apply to the judge who made the order or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

**History: En. Sec. 97, p. 151, L. 1867; re-en. Sec. 105, p. 48, Cod. Stat. 1871; re-en. Sec. 143, p. 73, L. 1877; re-en. Sec. 143, 1st Div. Rev. Stat. 1879; re-en. Sec. 145, 1st Div. Comp. Stat. 1887; re-en. Sec. 825, C. Civ. Proc. 1895; re-en. Sec. 6620, Rev. C. 1907; re-en. Sec. 9218, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 503; re-en. Sec. 9218, R.C.M. 1935; R.C.M. 1947, 93-4026.**

**27-16-302. When order vacated or bail reduced.** If, upon such application, it satisfactorily appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appears that the bail was fixed too high, the amount shall be reduced.

**History: En. Sec. 98, p. 151, L. 1867; re-en. Sec. 106, p. 48, Cod. Stat. 1871; re-en. Sec. 144, p. 73, L. 1877; re-en. Sec. 144, 1st Div. Rev. Stat. 1879; re-en. Sec. 146, 1st Div. Comp. Stat. 1887; re-en. Sec. 826, C. Civ. Proc. 1895; re-en. Sec. 6621, Rev. C. 1907; re-en. Sec. 9219, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 504; re-en. Sec. 9219, R.C.M. 1935; R.C.M. 1947, 93-4027.**

## Part 4
## Giving Bail

**27-16-401. Discharge of defendant upon giving bail before execution.** The defendant, at any time before execution, is discharged from arrest either upon giving bail or upon depositing the amount mentioned in the order, as provided in this chapter.

**History: En. Sec. 80, p. 149, L. 1867; re-en. Sec. 88, p. 45, Cod. Stat. 1871; re-en. Sec. 126, p. 70, L. 1877; re-en. Sec. 126, 1st Div. Rev. Stat. 1879; re-en. Sec. 128, 1st Div. Comp. Stat. 1887; re-en. Sec. 808, C. Civ. Proc. 1895; re-en. Sec. 6603, Rev. C. 1907; re-en. Sec. 9201, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 486; re-en. Sec. 9201, R.C.M. 1935; R.C.M. 1947, 93-4009.**

**27-16-402. Form of undertaking for bail.** The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant must at all times be amenable to the process of the court during the pendency of the action and to the orders that may be issued to enforce the judgment in the action or that they will pay to the plaintiff the amount of any judgment that may be recovered in the action.

**History: En. Sec. 81, p. 149, L. 1867; re-en. Sec. 89, p. 45, Cod. Stat. 1871; re-en. Sec. 127, p. 70, L. 1877; re-en. Sec. 127, 1st Div. Rev. Stat. 1879; re-en. Sec. 129, 1st Div. Comp. Stat. 1887; re-en. Sec. 809, C. Civ. Proc. 1895; re-en. Sec. 6604, Rev. C. 1907; re-en. Sec. 9202, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 487; re-en. Sec. 9202, R.C.M. 1935; R.C.M. 1947, 93-4010; amd. Sec. 640, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-16-403. Qualifications of sureties.** The qualifications of bail must be as follows:

(1) Each of them must be a resident and householder or freeholder within the county.

(2) Each must be worth the amount specified in the order of arrest or the amount to which the order is reduced, as provided in this chapter, over and above all the bail's debts and liabilities, exclusive of property exempt from execution. However, the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification is equivalent to that of two sufficient bail.

**History: En. Sec. 88, p. 150, L. 1867; re-en. Sec. 96, p. 46, Cod. Stat. 1871; re-en. Sec. 134, p. 71, L. 1877; re-en. Sec. 134, 1st Div. Rev. Stat. 1879; re-en. Sec. 136, 1st Div. Comp. Stat. 1887; re-en. Sec. 816, C. Civ. Proc. 1895; re-en. Sec. 6611, Rev. C. 1907; re-en. Sec. 9209, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 494; re-en. Sec. 9209, R.C.M. 1935; R.C.M. 1947, 93-4017; amd. Sec. 641, Ch. 56, L. 2009.**

**27-16-404. Filing of order with return and undertaking — plaintiff's notice of nonacceptance.** (1) Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with the return endorsed on the order, together with a copy of the undertaking of the bail. The sheriff shall retain the original undertaking in the sheriff's possession until filed, as provided in this section.

(2) The plaintiff, within 10 days after filing, may serve upon the sheriff a notice that the plaintiff does not accept the bail, or the plaintiff is considered to have accepted the bail and the sheriff is exonerated from liability. If notice has not been served within 10 days, the original undertaking must be filed with the clerk of the court.

**History: En. Sec. 86, p. 150, L. 1867; re-en. Sec. 94, p. 46, Cod. Stat. 1871; re-en. Sec. 132, p. 71, L. 1877; re-en. Sec. 132, 1st Div. Rev. Stat. 1879; re-en. Sec. 134, 1st Div. Comp. Stat. 1887; re-en. Sec. 814, C. Civ. Proc. 1895; re-en. Sec. 6609, Rev. C. 1907; re-en. Sec. 9207, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 492; re-en. Sec. 9207, R.C.M. 1935; R.C.M. 1947, 93-4015; amd. Sec. 642, Ch. 56, L. 2009.**

**27-16-405. Notice of justification of sureties — new undertaking.** Within 5 days after receipt of notice, the sheriff or defendant may give to the plaintiff or the plaintiff's attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the attorney, before a judge of the court or clerk of the court, at a specified time and place, not to be less than 5 or more than 10 days after the notice of the justification, except with consent of parties. If other bail is given, there must be a new undertaking.

**History: En. Sec. 87, p. 150, L. 1867; re-en. Sec. 95, p. 46, Cod. Stat. 1871; re-en. Sec. 133, p. 71, L. 1877; re-en. Sec. 133, 1st Div. Rev. Stat. 1879; re-en. Sec. 135, 1st Div. Comp. Stat. 1887; re-en. Sec. 815, C. Civ. Proc. 1895; re-en. Sec. 6610, Rev. C. 1907; re-en. Sec. 9208, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 493; re-en. Sec. 9208, R.C.M. 1935; R.C.M. 1947, 93-4016; amd. Sec. 643, Ch. 56, L. 2009.**

**27-16-406. Procedure for justification.** For the purpose of justification, each of the bail shall attend before the judge or clerk at the time and place specified in the notice and may be examined on oath, on the part of the plaintiff, touching the bail's sufficiency, in a manner that the judge or clerk, in the judge's or clerk's discretion, may think proper. The examination must be reduced to writing and subscribed by the bail if required by the plaintiff.

**History: En. Sec. 89, p. 150, L. 1867; re-en. Sec. 97, p. 47, Cod. Stat. 1871; re-en. Sec. 135, p. 72, L. 1877; re-en. Sec. 135, 1st Div. Rev. Stat. 1879; re-en. Sec. 137, 1st Div. Comp. Stat. 1887; re-en. Sec. 817, C. Civ. Proc. 1895; re-en. Sec. 6612, Rev. C. 1907; re-en. Sec. 9210, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 495; re-en. Sec. 9210, R.C.M. 1935; R.C.M. 1947, 93-4018; amd. Sec. 644, Ch. 56, L. 2009.**

**27-16-407. Acceptance of sufficiency of sureties by judge or clerk.** If the judge or clerk finds the bail sufficient, the judge or clerk shall annex the examination to the undertaking, endorse the allowance on the examination, and cause them to be filed, and the sheriff is then exonerated from liability.

**History: En. Sec. 90, p. 150, L. 1867; re-en. Sec. 98, p. 47, Cod. Stat. 1871; re-en. Sec. 136, p. 72, L. 1877; re-en. Sec. 136, 1st Div. Rev. Stat. 1879; re-en. Sec. 138, 1st Div. Comp. Stat. 1887; re-en. Sec. 818, C. Civ. Proc. 1895; re-en. Sec. 6613, Rev. C. 1907; re-en. Sec. 9211, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 496; re-en. Sec. 9211, R.C.M. 1935; R.C.M. 1947, 93-4019; amd. Sec. 645, Ch. 56, L. 2009.**

## Part 5
## Liability and Exoneration of Sureties

**Part Cross-References**
Suretyship, Title 28, ch. 11, part 4.

**27-16-501. Surrender of defendant.** At any time before judgment or within 10 days after the judgment, the bail may surrender the defendant in their exoneration or the defendant may surrender to the sheriff of the county where the defendant was arrested.

**History: En. Sec. 82, p. 149, L. 1867; re-en. Sec. 90, p. 45, Cod. Stat. 1871; re-en. Sec. 128, p. 70, L. 1877; re-en. Sec. 128, 1st Div. Rev. Stat. 1879; re-en. Sec. 130, 1st Div. Comp. Stat. 1887; re-en. Sec. 810, C. Civ. Proc. 1895; re-en. Sec. 6605, Rev. C. 1907; re-en. Sec. 9203, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 488; re-en. Sec. 9203, R.C.M. 1935; R.C.M. 1947, 93-4011; amd. Sec. 646, Ch. 56, L. 2009.**

**27-16-502. Manner and time of surrender.** For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may arrest the defendant or, by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to arrest the defendant.

**History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part); amd. Sec. 647, Ch. 56, L. 2009.**

**27-16-503. Exoneration of sureties.** Upon arrest of the defendant by the sheriff or upon the defendant's delivery to the sheriff by the bail or upon the defendant's own surrender, the bail must be exonerated if the arrest, delivery, or surrender take place before the expiration of 10 days after judgment. However, if the arrest, delivery, or surrender is not made within 10 days after the judgment, the bail must be finally charged on their undertaking and be bound to pay the amount of the judgment within 10 days after the judgment.

**History: En. Sec. 83, p. 149, L. 1867; re-en. Sec. 91, p. 45, Cod. Stat. 1871; re-en. Sec. 129, p. 70, L. 1877; re-en. Sec. 129, 1st Div. Rev. Stat. 1879; re-en. Sec. 131, 1st Div. Comp. Stat. 1887; re-en. Sec. 811, C. Civ. Proc. 1895; re-en. Sec. 6606, Rev. C. 1907; re-en. Sec. 9204, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 489; re-en. Sec. 9204, R.C.M. 1935; R.C.M. 1947, 93-4012(part); amd. Sec. 648, Ch. 56, L. 2009.**

**27-16-504. Action to enforce sureties' liability.** If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

**History: En. Sec. 84, p. 149, L. 1867; re-en. Sec. 92, p. 45, Cod. Stat. 1871; re-en. Sec. 130, p. 70, L. 1877; re-en. Sec. 130, 1st Div. Rev. Stat. 1879; re-en. Sec. 132, 1st Div. Comp. Stat. 1887; re-en. Sec. 812, C. Civ. Proc. 1895; re-en. Sec. 6607, Rev. C. 1907; re-en. Sec. 9205, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 490; re-en. Sec. 9205, R.C.M. 1935; R.C.M. 1947, 93-4013.**

**27-16-505. Other circumstances in which sureties exonerated.** The bail must also be exonerated by the death of the defendant, the defendant's imprisonment in the state prison, or the defendant's legal discharge from the obligation to render the defendant amenable to the process.

**History: En. Sec. 85, p. 149, L. 1867; re-en. Sec. 93, p. 46, Cod. Stat. 1871; re-en. Sec. 131, p. 71, L. 1877; re-en. Sec. 131, 1st Div. Rev. Stat. 1879; re-en. Sec. 133, 1st Div. Comp. Stat. 1887; re-en. Sec. 813, C. Civ. Proc. 1895; re-en. Sec. 6608, Rev. C. 1907; re-en. Sec. 9206, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 491; re-en. Sec. 9206, R.C.M. 1935; R.C.M. 1947, 93-4014; amd. Sec. 649, Ch. 56, L. 2009.**

## Part 6
## Deposit of Money in Lieu of Bail

**27-16-601. Deposit of money by defendant with sheriff.** The defendant may, at the time of arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order.

If the amount of bail is reduced, as provided in this chapter, the defendant may deposit the amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

**History: En. Sec. 91, p. 150, L. 1867; re-en. Sec. 99, p. 47, Cod. Stat. 1871; re-en. Sec. 137, p. 72, L. 1877; re-en. Sec. 137, 1st Div. Rev. Stat. 1879; re-en. Sec. 139, 1st Div. Comp. Stat. 1887; re-en. Sec. 819, C. Civ. Proc. 1895; re-en. Sec. 6614, Rev. C. 1907; re-en. Sec. 9212, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 497; re-en. Sec. 9212, R.C.M. 1935; R.C.M. 1947, 93-4020; amd. Sec. 650, Ch. 56, L. 2009.**

**27-16-602. Sheriff to pay money into court — certificates of payment.** The sheriff shall, immediately after the deposit, pay the amount into court and take from the clerk receiving the amount two certificates of payment, one of which the sheriff shall deliver or transmit to the plaintiff or the plaintiff's attorney and the other to the defendant. For any default in making the payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

**History: En. Sec. 92, p. 151, L. 1867; re-en. Sec. 100, p. 47, Cod. Stat. 1871; re-en. Sec. 138, p. 72, L. 1877; re-en. Sec. 138, 1st Div. Rev. Stat. 1879; re-en. Sec. 140, 1st Div. Comp. Stat. 1887; re-en. Sec. 820, C. Civ. Proc. 1895; re-en. Sec. 6615, Rev. C. 1907; re-en. Sec. 9213, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 498; re-en. Sec. 9213, R.C.M. 1935; R.C.M. 1947, 93-4021; amd. Sec. 651, Ch. 56, L. 2009.**

**27-16-603. Substituting bail for deposit.** If money be deposited, as provided in 27-16-601 and 27-16-602, bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

**History: En. Sec. 93, p. 151, L. 1867; re-en. Sec. 101, p. 47, Cod. Stat. 1871; re-en. Sec. 139, p. 72, L. 1877; re-en. Sec. 139, 1st Div. Rev. Stat. 1879; re-en. Sec. 141, 1st Div. Comp. Stat. 1887; re-en. Sec. 821, C. Civ. Proc. 1895; re-en. Sec. 6616, Rev. C. 1907; re-en. Sec. 9214, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 499; re-en. Sec. 9214, R.C.M 1935; R.C.M. 1947, 93-4022.**

**27-16-604. Disposition of deposited money after judgment.** If money has been deposited and it remains on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under direction of the court, apply the money in satisfaction of the judgment and, after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk shall, under the direction of the court, refund the whole sum deposited and remaining unapplied to the defendant.

**History: En. Sec. 94, p. 151, L. 1867; re-en. Sec. 102, p. 48, Cod. Stat. 1871; re-en. Sec. 140, p. 73, L. 1877; re-en. Sec. 140, 1st Div. Rev. Stat. 1879; re-en. Sec. 142, 1st Div. Comp. Stat. 1887; re-en. Sec. 822, C. Civ. Proc. 1895; re-en. Sec. 6617, Rev. C. 1907; re-en. Sec. 9215, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 500; re-en. Sec. 9215, R.C.M. 1935; R.C.M. 1947, 93-4023; amd. Sec. 652, Ch. 56, L. 2009.**

## Part 7 reserved

## Part 8
## Immigration Detainer Request Arrests

**Cross-References**

Sanctuary jurisdictions — prohibitions, Title 2, ch. 1, part 6

**27-16-801. Immigration detainer requests — arrest authority and duty to arrest.** (1) A public safety officer as defined in 44-4-401(2) who is in possession of an immigration detainer request issued by a federal immigration agency shall arrest a person who is already in custody and the subject of an immigration detainer request;

(2) As used in this section, the following definitions apply:

(a) (i) "Federal immigration agency" means the United States department of justice, the United States department of homeland security, and any division, agency, or other component of either of those departments, including but not limited to United States immigration and customs enforcement, United States customs and border protection, United States citizenship and immigration services, and any successor department, division, agency or other component.

(ii) The term includes officials, officers, representatives, agents, and employees.

(b) "Immigration detainer request" means a written or electronic request issued by a federal immigration agency to detain and maintain control of an alien.

(3) In executing an arrest pursuant to an immigration detainer request, a public safety officer shall:

(a) comply with, honor, and fulfill any request made in the detainer request provided by the federal government; and

(b) inform the person to whom the immigration detainer request applies that the person is being held pursuant to an immigration detainer request issued by a federal immigration agency.

(4) A public safety officer is not required to arrest or detain a person if presented with credible evidence that the person is a citizen of the United States or that the person has lawful immigration status in the United States.

(5) To meet the duty established in this section, a public safety officer may not maintain custody of a person subject to a detainer for longer than 48 hours, excluding weekends and holidays, beyond the time that the person would otherwise have been released from custody.

**History: En. Sec. 1, Ch. 207, L. 2021.**

## Part 9 reserved

## Part 10
## Arrest in Civil Actions in Justice's Court

**27-16-1001. Justice's authority to order arrest.** An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons and brought before the justice and there detained until duly discharged, in the cases mentioned in 27-16-102.

**History: En. Sec. 560, p. 153, Bannack Stat.; re-en. Sec. 666, p. 170, Cod. Stat. 1871; re-en. Sec. 726, 1st Div. Rev. Stat. 1879; re-en. Sec. 746, 1st Div. Comp. Stat. 1887; amd. Sec. 1540, C. Civ. Proc. 1895; re-en. Sec. 7019, Rev. C. 1907; re-en. Sec. 9652, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 861; re-en. Sec. 9652, R.C.M. 1935; R.C.M. 1947, 93-6901.**

**27-16-1002. Plaintiff's affidavit and undertaking.** Before an order of arrest can be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of the party or some other person, the facts upon which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant and all damages that the defendant may sustain by reason of the arrest, if the arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking.

**History: En. Sec. 561, p. 154, Bannack Stat.; re-en. Sec. 667, p. 170, Cod. Stat. 1871; re-en. Sec. 727, 1st Div. Rev. Stat. 1879; re-en. Sec. 747, 1st Div. Comp. Stat. 1887; amd. Sec. 1541, C. Civ. Proc. 1895; re-en. Sec. 7020, Rev. C. 1907; re-en. Sec. 9653, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 862; re-en. Sec. 9653, R.C.M. 1935; R.C.M. 1947, 93-6902; amd. Sec. 653, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-16-1003. Defendant to be taken before justice immediately.** The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order. If the justice is absent or unable to try the action or if it appears to the justice by the affidavit of defendant that the justice is a material witness in the action, the officer shall immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who shall take jurisdiction of the action and proceed as if the summons had been issued and the order of arrest made by that justice.

**History: En. Sec. 562, p. 154, Bannack Stat.; re-en. Sec. 668, p. 171, Cod. Stat. 1871; re-en. Sec. 728, 1st Div. Rev. Stat. 1879; re-en. Sec. 748, 1st Div. Comp. Stat. 1887; amd. Sec. 1542, C. Civ. Proc. 1895; re-en. Sec. 7021, Rev. C. 1907; re-en. Sec. 9654, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 863; re-en. Sec. 9654, R.C.M. 1935; amd. Sec. 18, Ch. 491, L. 1973; R.C.M. 1947, 93-6903; amd. Sec. 654, Ch. 56, L. 2009.**

**27-16-1004. Notice to plaintiff of arrest — officer's certificate.** The officer making the arrest shall immediately give notice of the arrest to the plaintiff or the plaintiff's attorney or agent and endorse on the summons and subscribe a certificate, stating the time of serving the summons and the time of arrest and of the officer giving notice to the plaintiff.

**History:** En. Sec. 563, p. 154, Bannack Stat.; re-en. Sec. 669, p. 171, Cod. Stat. 1871; re-en. Sec. 729, 1st Div. Rev. Stat. 1879; re-en. Sec. 749, 1st Div. Comp. Stat. 1887; re-en. Sec. 1543, C. Civ. Proc. 1895; re-en. Sec. 7022, Rev. C. 1907; re-en. Sec. 9655, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 864; re-en. Sec. 9655, R.C.M. 1935; R.C.M. 1947, 93-6904; amd. Sec. 655, Ch. 56, L. 2009.

**27-16-1005. Officer to detain defendant — expenses.** The officer making the arrest shall keep the defendant in custody until the defendant is discharged by order of the justice. The officer may not be bound to keep the defendant under arrest more than 24 hours unless the plaintiff pays each day the expenses of keeping the defendant, which expense must be taxed as costs in the action and may not be a charge against the county.

**History:** En. Sec. 564, p. 154, Bannack Stat.; re-en. Sec. 670, p. 171, Cod. Stat. 1871; re-en. Sec. 730, 1st Div. Rev. Stat. 1879; re-en. Sec. 750, 1st Div. Comp. Stat. 1887; re-en. Sec. 1544, C. Civ. Proc. 1895; re-en. Sec. 7023, Rev. C. 1907; re-en. Sec. 9656, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 865; re-en. Sec. 9656, R.C.M. 1935; R.C.M. 1947, 93-6905; amd. Sec. 656, Ch. 56, L. 2009.

**27-16-1006. Defense against order of arrest.** The defendant may file an answer, under oath, putting in issue the facts stated in the affidavit for the order of arrest, which may be tried by the court unless a jury is demanded; and the plaintiff must be held to establish the facts. If the plaintiff fails to establish the facts, the order of arrest must be dismissed and the defendant may proceed upon the undertaking of the plaintiff for damages occasioned by the arrest. The defendant may apply to the court to be discharged from arrest upon the ground of the insufficiency of the papers on which the order of arrest was granted.

**History:** En. Sec. 567, p. 155, Bannack Stat.; re-en. Sec. 673, p. 171, Cod. Stat. 1871; re-en. Sec. 733, 1st Div. Rev. Stat. 1879; re-en. Sec. 753, 1st Div. Comp. Stat. 1887; re-en. Sec. 1545, C. Civ. Proc. 1895; re-en. Sec. 7024, Rev. C. 1907; re-en. Sec. 9657, R.C.M. 1921; re-en. Sec. 9657, R.C.M. 1935; R.C.M. 1947, 93-6906; amd. Sec. 657, Ch. 56, L. 2009.

# CHAPTER 17
# CLAIM AND DELIVERY OF PERSONAL PROPERTY

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**Chapter Cross-References**

Bailment — deposit, Title 70, ch. 6.

## Part 1
## General Provisions

**27-17-101. When plaintiff may claim delivery.** The plaintiff in an action to recover possession of personal property may, at the time of issuing summons or at any time after issuing summons and before answer, claim the delivery of the property, as provided in this chapter.

**History:** En. Sec. 71, p. 56, Bannack Stat.; re-en. Sec. 99, p. 151, L. 1867; re-en. Sec. 116, p. 49, Cod. Stat. 1871; re-en. Sec. 154, p. 75, L. 1877; re-en. Sec. 154, 1st Div. Rev. Stat. 1879; re-en. Sec. 156, 1st Div. Comp. Stat. 1887; re-en. Sec. 840, C. Civ. Proc. 1895; re-en. Sec. 6622, Rev. C. 1907; re-en. Sec. 9220, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 509; re-en. Sec. 9220, R.C.M. 1935; R.C.M. 1947, 93-4101; amd. Sec. 658, Ch. 56, L. 2009.

**27-17-102. Claim and delivery in justice's court.** Parts 2, 3, and 4 of this chapter and Rule 55(b)(2), M.R.Civ.P., are applicable to a claim to recover personal property when made in justices' courts, and the powers given in those statutes and rules and the duties imposed on sheriffs are extended to constables and the word "justice" is substituted for "judge". The justice, instead of the plaintiff or the plaintiff's attorney, may, by an endorsement in writing upon the affidavit, order the sheriff or constable to take the property mentioned in the affidavit.

**History:** En. Sec. 572, p. 156, Bannack Stat.; re-en. Sec. 678, p. 172, Cod. Stat. 1871; re-en. Sec. 738, 1st Div. Comp. Stat. 1879; re-en. Sec. 758, 1st Div. Comp. Stat. 1887; amd. Sec. 1570, C. Civ. Proc. 1895; re-en. Sec. 7030, Rev. C. 1907; re-en. Sec. 9663, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 870; re-en. Sec. 9663, R.C.M. 1935; R.C.M. 1947, 93-6912(part); amd. Sec. 659, Ch. 56, L. 2009.

## Part 2
## Procedure for Obtaining Seizure of Property

**27-17-201. Plaintiff's affidavit.** When a delivery is claimed, an affidavit must be made by the person claiming the property or someone on the person's behalf, stating:

(1) facts that establish reasonable belief that the person claiming the property is the owner or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(2) that the property is wrongfully detained by the defendant;

(3) that the property has not been taken for a tax, assessment, or fine, pursuant to statute, or seized under an execution or an attachment against the property of the person claiming the property or, if seized, that it is by statute exempt from seizure; and

(4) a particular description of the property and the actual value of the property.

**History:** En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(1); amd. Sec. 660, Ch. 56, L. 2009.

**27-17-202. Description of property in affidavit.** Where the affidavit describes two or more chattels of the same kind, it must state the number thereof, and where it describes a chattel in bulk, it must state the weight, measurement, or other quantity, as nearly as can be ascertained. Where it describes two or more chattels, it may, at the election of the plaintiff, state the aggregate value of all or, separately, the value of any chattel or of any class of chattels and the aggregate value of the remainder, if any.

**History:** En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).

**27-17-203. Order from judge.** The sheriff may not make a seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign an order if the judge is satisfied of either of the following:

(1) that the party seeking possession of the property has made a prima facie showing of the right to possession and the necessity for seizure at a show cause hearing before the judge with at least 3 days' notice to the person in possession of the property. If the person cannot be found for personal service, notice posted on the property and in three public places in the county where the property is located is sufficient service for this purpose.

(2) that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of impairment must be presented in open court, and the court shall set forth with specificity the reasons why the delay would seriously impair the remedy sought by the person seeking possession.

**History: En. Sec. 72, p. 56, Bannack Stat.; amd. Sec. 100, p. 151, L. 1867; re-en. Sec. 117, p. 49, Cod. Stat. 1871; re-en. Sec. 155, p. 75, L. 1877; re-en. Sec. 155, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 103, L. 1885; re-en. Sec. 157, 1st Div. Comp. Stat. 1887; re-en. Sec. 841, C. Civ. Proc. 1895; re-en. Sec. 6623, Rev. C. 1907; re-en. Sec. 9221, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 510; re-en. Sec. 9221, R.C.M. 1935; amd. Sec. 1, Ch. 362, L. 1975; R.C.M. 1947, 93-4102(2); amd. Sec. 661, Ch. 56, L. 2009.**

**27-17-204. Endorsement requiring sheriff to take property.** The plaintiff or the plaintiff's attorney may, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the property from the defendant.

**History: En. Sec. 73, p. 56, Bannack Stat.; re-en. Sec. 101, p. 152, L. 1867; re-en. Sec. 118, p. 49, Cod. Stat. 1871; re-en. Sec. 156, p. 76, L. 1877; re-en. Sec. 156, 1st Div. Rev. Stat. 1879; re-en. Sec. 158, 1st Div. Comp. Stat. 1887; re-en. Sec. 842, C. Civ. Proc. 1895; re-en. Sec. 6624, Rev. C. 1907; re-en. Sec. 9222, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 511; re-en. Sec. 9222, R.C.M. 1935; R.C.M. 1947, 93-4103; amd. Sec. 662, Ch. 56, L. 2009.**

**27-17-205. Plaintiff's undertaking — service and execution by sheriff.** Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff or a letter of credit issued by a regulated lender as defined in 31-1-111, in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return of the property is adjudged, and for the payment to the defendant of the sum that may from any cause be recovered against the plaintiff, the sheriff shall take the property described in the affidavit, if it is in the possession of the defendant or the defendant's agent, and retain it in the sheriff's custody or deliver it to the plaintiff as provided in 27-17-311. The sheriff shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the papers to the defendant personally, if the defendant can be found, or to the defendant's agent from whose possession the property is taken or, if neither can be found, by leaving the papers at the usual place of abode of either with some person of suitable age and discretion or, if neither have any known place of abode, by putting the papers in the nearest post office, directed to the defendant.

**History: En. Sec. 74, p. 56, Bannack Stat.; en. Sec. 102, p. 152, L. 1867; re-en. Sec. 119, p. 49, Cod. Stat. 1871; re-en. Sec. 157, p. 76, L. 1877; re-en. Sec. 157, 1st Div. Rev. Stat. 1879; re-en. Sec. 159, 1st Div. Comp. Stat. 1887; re-en. Sec. 843, C. Civ. Proc. 1895; re-en. Sec. 6625, Rev. C. 1907; re-en. Sec. 9223, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 512; re-en. Sec. 9223, R.C.M. 1935; R.C.M. 1947, 93-4104; amd. Sec. 663, Ch. 56, L. 2009; amd. Sec. 3, Ch. 389, L. 2019.**

**27-17-206. Manner of seizure of concealed property.** If the property or any part of the property is concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If the property is not delivered, the sheriff shall cause the building or enclosure to be broken open and take the property into the sheriff's possession and, if necessary, the sheriff may call to the sheriff's aid the power of the county.

**History: En. Sec. 107, p. 152, L. 1867; re-en. Sec. 124, p. 50, Cod. Stat. 1871; re-en. Sec. 166, p. 79, L. 1877; re-en. Sec. 166, 1st Div. Rev. Stat. 1879; re-en. Sec. 168, 1st Div. Comp. Stat. 1887; re-en. Sec. 852, C. Civ. Proc. 1895; re-en. Sec. 6634, Rev. C. 1907; re-en. Sec. 9232, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 517; re-en. Sec. 9232, R.C.M. 1935; R.C.M. 1947, 93-4113; amd. Sec. 664, Ch. 56, L. 2009.**

**27-17-207. Seizure when part of property cannot be found.** The sheriff must take a less number or quantity if the whole of the property described in the affidavit cannot be found.

**History: En. Sec. 857, C. Civ. Proc. 1895; re-en. Sec. 6639, Rev. C. 1907; re-en. Sec. 9237, R.C.M. 1921; re-en. Sec. 9237, R.C.M. 1935; R.C.M. 1947, 93-4118.**

**27-17-208. Security for sheriff's costs when property seized.** If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of an order for claim and delivery shall provide a bond or other security to pay for all costs that may be incurred as a result of the service of such order.

**History: En. Sec. 11, Ch. 88, L. 1987.**

## Part 3
## Procedure Following Seizure by Sheriff

**27-17-301. Duty of sheriff to keep and deliver property.** When the sheriff has taken property, as provided in this chapter, the sheriff shall keep the property in a secure place and deliver it to the party entitled to the property upon receiving the sheriff's lawful fees for taking and the necessary expenses for keeping the property.

**History: En. Sec. 108, p. 153, L. 1867; re-en. Sec. 125, p. 51, Cod. Stat. 1871; re-en. Sec. 167, p. 79, L. 1877; re-en. Sec. 167, 1st Div. Rev. Stat. 1879; re-en. Sec. 169, 1st Div. Comp. Stat. 1887; re-en. Sec. 853, C. Civ. Proc. 1895; re-en. Sec. 6635, Rev. C. 1907; re-en. Sec. 9233, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 518; re-en. Sec. 9233, R.C.M. 1935; R.C.M. 1947, 93-4114; amd. Sec. 665, Ch. 56, L. 2009.**

**27-17-302. Sheriff's return of execution.** The sheriff shall file the notice, undertaking, and affidavit, with the sheriff's proceedings thereon, with the clerk of the court in which the action is pending within 20 days after taking the property mentioned in the notice, undertaking, and affidavit.

**History: En. Sec. 110, p. 153, L. 1867; re-en. Sec. 127, p. 51, Cod. Stat. 1871; re-en. Sec. 169, p. 79, L. 1877; re-en. Sec. 169, 1st Div. Rev. Stat. 1879; re-en. Sec. 171, 1st Div. Comp. Stat. 1887; re-en. Sec. 855, C. Civ. Proc. 1895; re-en. Sec. 6637, Rev. C. 1907; re-en. Sec. 9235, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 520; re-en. Sec. 9235, R.C.M. 1935; R.C.M. 1947, 93-4116; amd. Sec. 666, Ch. 56, L. 2009.**

**27-17-303. Exception to plaintiff's sureties — justification — liability of sheriff.** The defendant may, within 2 days after service of a copy of the affidavit and undertaking, give notice to the sheriff that the defendant takes exception to the sufficiency of the sureties. If the defendant fails to do so, the defendant is considered to have waived all objections to the sureties. When the defendant takes exception, the sureties must justify on notice in like manner as upon bail on arrest and the sheriff is responsible for the sufficiency of the sureties until the objection to them is waived, as provided in this section, or until they justify. If the defendant takes exception to the sureties, the defendant cannot claim the property, as provided in 27-17-304.

**History: En. Sec. 103, p. 152, L. 1867; re-en. Sec. 120, p. 50, Cod. Stat. 1871; re-en. Sec. 158, p. 76, L. 1877; re-en. Sec. 158, 1st Div. Rev. Stat. 1879; re-en. Sec. 160, 1st Div. Comp. Stat. 1887; re-en. Sec. 844, C. Civ. Proc. 1895; re-en. Sec. 6626, Rev. C. 1907; re-en. Sec. 9224, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 513; re-en. Sec. 9224, R.C.M. 1935; R.C.M. 1947, 93-4105; amd. Sec. 667, Ch. 56, L. 2009.**

**27-17-304. When defendant may require return of property — undertaking.** At any time before the delivery of the property to the plaintiff, the defendant may, if the defendant does not take exception to the sureties of the plaintiff, require the return of the property upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties or a letter of credit issued by a regulated lender as defined in 31-1-111, in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery of the property to the plaintiff, if the delivery is adjudged, and for the payment to the plaintiff of the sum that may, for any cause, be recovered against the defendant.

**History: En. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; R.C.M. 1947, 93-4110(part); amd. Sec. 668, Ch. 56, L. 2009; amd. Sec. 4, Ch. 389, L. 2019.**

**27-17-305. Return of part of the property.** Where the plaintiff's affidavit states separately the value of one or more chattels or classes of chattels, the defendant may require, as prescribed in this chapter, the return of any or all of the chattels or classes of chattels the value of which is thus stated or of the portion thereof which has been taken.

**History: En. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; R.C.M. 1947, 93-4117(part).**

**27-17-306. Justification of defendant's sureties — liability of sheriff.** The defendant's sureties, upon notice to the plaintiff of not less than 2 or more than 5 days, shall justify before the judge or clerk in the same manner as upon bail on arrest, and upon the justification the sheriff shall deliver the property to the defendant. The sheriff must be responsible for the defendant's sureties until they justify or until the justification is completed or expressly waived and may retain the property until that time. However, if the sureties or others in their place fail to justify at the time or place appointed, the sheriff shall deliver the property to the plaintiff.

**History: En. Sec. 105, p. 152, L. 1867; re-en. Sec. 122, p. 50, Cod. Stat. 1871; re-en. Sec. 164, p. 78, L. 1877; re-en. Sec. 164, 1st Div. Rev. Stat. 1879; re-en. Sec. 166, 1st Div. Comp. Stat. 1887; re-en. Sec. 850, C. Civ. Proc.**

**1895; re-en. Sec. 6632, Rev. C. 1907; re-en. Sec. 9230, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 515; re-en. Sec. 9230, R.C.M. 1935; R.C.M. 1947, 93-4111; amd. Sec. 669, Ch. 56, L. 2009.**

**27-17-307. Procedure for qualification and justification of sureties.** The qualification of sureties and their justification shall be such as are prescribed by chapter 16 in respect to bail upon an order of arrest.

**History: En. Sec. 106, p. 152, L. 1867; re-en. Sec. 123, p. 50, Cod. Stat. 1871; re-en. Sec. 165, p. 78, L. 1877; re-en. Sec. 165, 1st Div. Rev. Stat. 1879; re-en. Sec. 167, 1st Div. Comp. Stat. 1887; re-en. Sec. 851, C. Civ. Proc. 1895; re-en. Sec. 6633, Rev. C. 1907; re-en. Sec. 9231, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 516; re-en. Sec. 9231, R.C.M. 1935; R.C.M. 1947, 93-4112.**

**27-17-308. Delivery of property to plaintiff if not returned to defendant.** If a return of the property be not required within 5 days after the taking and serving notice to the defendant, it shall be delivered to the plaintiff, except as provided in 27-17-309. If the defendant procures a return under 27-17-305, the remainder must be delivered to the plaintiff, except as is otherwise prescribed in this chapter.

**History: Ap. p. Sec. 104, p. 152, L. 1867; re-en. Sec. 121, p. 50, Cod. Stat. 1871; re-en. Sec. 163, p. 78, L. 1877; re-en. Sec. 163, 1st Div. Rev. Stat. 1879; re-en. Sec. 165, 1st Div. Comp. Stat. 1887; re-en. Sec. 849, C. Civ. Proc. 1895; re-en. Sec. 6631, Rev. C. 1907; re-en. Sec. 9229, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 514; re-en. Sec. 9229, R.C.M. 1935; Sec. 93-4110, R.C.M. 1947; Ap. p. Sec. 856, C. Civ. Proc. 1895; re-en. Sec. 6638, Rev. C. 1907; re-en. Sec. 9236, R.C.M. 1921; re-en. Sec. 9236, R.C.M. 1935; Sec. 93-4117, R.C.M. 1947; R.C.M. 1947, 93-4110(part), 93-4117(part).**

**27-17-309. Claim of property by third person — plaintiff to indemnify sheriff.** If the property taken is claimed by any person other than the defendant or the defendant's agent and the other person makes an affidavit of the person's title to the property or right of the possession of the property, stating the grounds of the right or title, and serves the affidavit upon the sheriff, the sheriff is not bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of the plaintiff or the plaintiff's agent, indemnifies the sheriff against the claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county. A claim to the property by any person other than the defendant or the defendant's agent is not valid against the sheriff unless made as provided in this section.

**History: En. Sec. 109, p. 153, L. 1867; re-en. Sec. 126, p. 51, Cod. Stat. 1871; re-en. Sec. 168, p. 79, L. 1877; re-en. Sec. 168, 1st Div. Rev. Stat. 1879; re-en. Sec. 170, 1st Div. Comp. Stat. 1887; re-en. Sec. 854, C. Civ. Proc. 1895; re-en. Sec. 6636, Rev. C. 1907; re-en. Sec. 9234, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 519; re-en. Sec. 9234, R.C.M. 1935; R.C.M. 1947, 93-4115; amd. Sec. 670, Ch. 56, L. 2009.**

**Cross-References**

Indemnity, Title 28, ch. 11, part 3.

**27-17-310. Answer of defendant claiming third person entitled to property.** The defendant may, by answer, defend on the ground that a third person was entitled to the property, without connecting the defendant with the third party's title.

**History: En. Sec. 858, C. Civ. Proc. 1895; re-en. Sec. 6640, Rev. C. 1907; re-en. Sec. 9238, R.C.M. 1921; re-en. Sec. 9238, R.C.M. 1935; R.C.M. 1947, 93-4119; amd. Sec. 671, Ch. 56, L. 2009.**

**27-17-311. Remedies of plaintiff following delivery by sheriff.** (1) When, as provided for in this chapter, the sheriff has taken property that is subject to a security interest arising under Title 30, chapter 9A, part 2, granted to plaintiff by defendant and return of the property is not required within 5 days after the taking and serving notice on the defendant, the sheriff shall deliver the property to the plaintiff.

(2) Upon delivery of the property by the sheriff, the plaintiff may then exercise the remedies available under Title 30, chapter 9A, part 6.

**History: En. Sec. 2, Ch. 389, L. 2019.**

## Part 4
## Judgment — Return of Property

**27-17-401. Form of judgment.** (1) In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or for the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

(2) The judgment in an action for claim and delivery in justices' courts must be entered substantially in the form required by subsection (1).

**History: (1)En. Sec. 176, p. 77, Bannack Stat.; re-en. Sec. 200, p. 174, L. 1867; re-en. Sec. 240, p. 77, Cod. Stat. 1871; re-en. Sec. 291, p. 115, L. 1877; re-en. Sec. 291, 1st Div. Rev. Stat. 1879; re-en. Sec. 303, 1st Div. Comp. Stat. 1887; re-en. Sec. 1193, C. Civ. Proc. 1895; re-en. Sec. 6803, Rev. C. 1907; re-en. Sec. 9406, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 667; re-en. Sec. 9406, R.C.M. 1935; Sec. 93-5704, R.C.M. 1947; (2)En. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 893; re-en. Sec. 9683, R.C.M. 1935; Sec. 93-7305, R.C.M. 1947; R.C.M. 1947, 93-5704, 93-7305(part).**

**27-17-402. Duty to return property in good condition.** In all cases when a judgment is rendered, in an action to recover the possession of personal property, for the return of personal property or its value if a return cannot be had, it is the duty of the party against whom the judgment is rendered to return the property in as good condition as the property was when possession was taken by the party.

**History: En. Sec. 159, p. 77, L. 1877; re-en. Sec. 159, 1st Div. Rev. Stat. 1879; re-en. Sec. 161, 1st Div. Comp. Stat. 1887; re-en. Sec. 845, C. Civ. Proc. 1895; re-en. Sec. 6627, Rev. C. 1907; re-en. Sec. 9225, R.C.M. 1921; re-en. Sec. 9225, R.C.M. 1935; R.C.M. 1947, 93-4106; amd. Sec. 672, Ch. 56, L. 2009.**

**27-17-403. Action for value of property and damages.** In case such property, while in the possession of the party against whom such judgment shall be rendered or while unlawfully detained from the party entitled to the possession thereof, be materially injured or lessened in value by use or otherwise, then a return or offer to return shall not be deemed a compliance with the undertaking given for its return but an action may be maintained for the value thereof, as assessed by the jury or court, and damages for its detention.

**History: En. Sec. 160, p. 77, L. 1877; re-en. Sec. 160, 1st Div. Rev. Stat. 1879; re-en. Sec. 162, 1st Div. Comp. Stat. 1887; re-en. Sec. 846, C. Civ. Proc. 1895; re-en. Sec. 6628, Rev. C. 1907; re-en. Sec. 9226, R.C.M. 1921; re-en. Sec. 9226, R.C.M. 1935; R.C.M. 1947, 93-4107.**

**27-17-404. Return of damaged property to officer for sale.** In case such action to recover possession of personal property is brought against any sheriff or other officer who may have levied upon and seized the same under authority of any attachment or other process and judgment shall be rendered in favor of such officer for the return of the property, the party against whom such judgment is rendered may nevertheless make return of said property, notwithstanding the same may have been injured or lessened in value, and thereupon it is the duty of such officer to immediately advertise the same for sale as in cases of sales of property under execution and apply the proceeds of the sale thereof, after paying the costs, towards the payment and satisfaction of any judgment that may have been rendered.

**History: En. Sec. 161, p. 77, L. 1877; re-en. Sec. 161, 1st Div. Rev. Stat. 1879; re-en. Sec. 163, 1st Div. Comp. Stat. 1887; re-en. Sec. 847, C. Civ. Proc. 1895; re-en. Sec. 6629, Rev. C. 1907; re-en. Sec. 9227, R.C.M. 1921; re-en. Sec. 9227, R.C.M. 1935; R.C.M. 1947, 93-4108.**

**27-17-405. Continuing liability of sureties.** Such second taking of such property, referred to in 27-17-404, does not release or discharge the sureties on any undertaking given for the return of such property, but an action may be maintained on such undertaking and recovery thereon had unless the property shall have been actually returned in accordance with the judgment rendered.

**History: En. Sec. 162, p. 77, L. 1877; re-en. Sec. 162, 1st Div. Rev. Stat. 1879; re-en. Sec. 164, 1st Div. Comp. Stat. 1887; re-en. Sec. 848, C. Civ. Proc. 1895; re-en. Sec. 6630, Rev. C. 1907; re-en. Sec. 9228, R.C.M. 1921; re-en. Sec. 9228, R.C.M. 1935; R.C.M. 1947, 93-4109.**

## CHAPTER 18

## PREJUDGMENT ATTACHMENT

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**Chapter Cross-References**

Execution of judgment, Title 25, ch. 13.

## Part 1
## General Provisions

**27-18-101. Cases in which property may be attached.** (1) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless;

(b) an action based upon a statutory stockholders' liability; and

(c) an action by a local government for the purpose of ensuring debris removal if it is determined that the underlying property is worth less than the cost of debris removal.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money.

**History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(2), (3); amd. Sec. 1, Ch. 194, L. 1985; amd. Sec. 1, Ch. 346, L. 2009.**

**27-18-102. What property subject to attachment.** (1) Except as provided in subsection (2), the rights or shares that the defendant has in the stock of any corporation or company, together with the interest and profits on the stock, all debts due the defendant, and all other property in this state of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

(2) In any action in which the amount sued for is $10 or less, the wages and earnings of the debtor or defendant for personal services rendered at any time within 30 days before the commencement of the action are exempt from attachment.

**History: (1)En. Sec. 95, p. 61, Bannack Stat.; amd. Sec. 124, p. 157, L. 1867; re-en. Sec. 141, p. 55, Cod. Stat. 1871; re-en. Sec. 183, p. 84, L. 1877; re-en. Sec. 183, 1st Div. Rev. Stat. 1879; re-en. Sec. 185, 1st Div. Comp. Stat. 1887; re-en. Sec. 894, C. Civ. Proc. 1895; re-en. Sec. 6661, Rev. C. 1907; re-en. Sec. 9261, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 541; re-en. Sec. 9261, R.C.M. 1935; Sec. 93-4306, R.C.M. 1947; (2)En. Sec. 1, Ch. 49, Ex. L. 1933; re-en. Sec. 9429.1, R.C.M. 1935; Sec. 93-5817, R.C.M. 1947; R.C.M. 1947, 93-4306, 93-5817; amd. Sec. 39, Ch. 12, L. 1979; amd. Sec. 673, Ch. 56, L. 2009.**

**Cross-References**

Attachment and execution — government property exempt, 2-9-318.
Public employees' retirement systems — exemption from execution, 19-2-1004.
Firefighters' retirement — exemption from execution, 19-18-612.
Police retirement — exemption from execution, 19-19-504.

Teachers' retirement — exemption from execution, 19-20-706.
Property exempt from execution, Title 25, ch. 13, part 6.
Judgment creditor's right to specific partnership property, 35-10-505.
Cooperative associations — shares exempt from execution, 35-15-404.
Homestead exemption, 70-32-201.

**27-18-103 through 27-18-110 reserved.**

**27-18-111. Court record not to be open to public until writ returned.** In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment.

**History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part).**

**27-18-112. Attachment book to be kept by county clerk.** There must be kept in the office of the county clerk of each county a book called "attachment book", in which must be entered by the clerk, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in the clerk's office. There must also be entered in the book the time the writ or notice was filed. The entry must be made under an appropriate heading for that purpose.

**History: En. Sec. 203, p. 89, L. 1877; re-en. Sec. 203, 1st Div. Rev. Stat. 1879; re-en. Sec. 205, 1st Div. Comp. Stat. 1887; amd. Sec. 924, C. Civ. Proc. 1895; re-en. Sec. 6691, Rev. C. 1907; re-en. Sec. 9293, R.C.M. 1921; re-en. Sec. 9293, R.C.M. 1935; R.C.M. 1947, 93-4340; amd. Sec. 674, Ch. 56, L. 2009.**

## Part 2
## Procedure for Obtaining Writ

**27-18-201. Time for attaching property.** A plaintiff, at the time of issuing the summons or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered.

**History: En. Sec. 890, C. Civ. Proc. 1895; re-en. Sec. 6656, Rev. C. 1907; re-en. Sec. 9256, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 537; amd. Sec. 1, Ch. 82, L. 1931; re-en. Sec. 9256, R.C.M. 1935; amd. Sec. 11-159, Ch. 264, L. 1963; amd. Sec. 1, Ch. 299, L. 1977; R.C.M. 1947, 93-4301(1).**

**27-18-202. Plaintiff's affidavit.** When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone on the plaintiff's behalf stating:

(1) facts that show that the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with the defendant property, money, or other effects that might be subjected to payment of the debt;

(b) is disposing or about to dispose of the defendant's property that would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property that would be subject to execution; or

(d) is likely to suffer liens or encumbrances on the defendant's property that would be subject to execution;

(4) a particular description and the actual value of the property to be attached;

(5) facts creating a reasonable basis for a local government's belief that the underlying property is worth less than the cost of debris removal.

**History: En. 93-4302.1 by Sec. 2, Ch. 299, L. 1977; R.C.M. 1947, 93-4302.1; amd. Sec. 675, Ch. 56, L. 2009; amd. Sec. 2, Ch. 346, L. 2009.**

**27-18-203. Affidavit requirements when debt not yet due.** Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the debt has become due or upon a local government debris removal issue when it appears by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking property, money, or other effects that might be subjected to the payment of the debt, for the purpose of defrauding the defendant's creditors or a local government; or

(2) that the defendant is disposing of property or is about to dispose of property, subject to execution, for the purpose of defrauding the defendant's creditors or a local government.

**History:** **En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part); amd. Sec. 676, Ch. 56, L. 2009; amd. Sec. 3, Ch. 346, L. 2009.**

**27-18-204. Plaintiff's undertaking.** Before issuing the writ, the court shall require a written undertaking on the part of the plaintiff, except a local government, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if the amount is $1,000 or less or, if the amount claimed by the plaintiff exceeds $1,000, then in a sum equal to the amount. An undertaking may not be required in an amount exceeding the sum of $20,000. The condition of the undertaking must be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff shall pay all costs that may be awarded to the defendant and all damages the defendant may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking.

**History:** **En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(1); amd. Sec. 677, Ch. 56, L. 2009; amd. Sec. 4, Ch. 346, L. 2009.**

**27-18-205. When judge may issue writ — notice.** A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) the judge has received the affidavit described in 27-18-202;
(2) the judge has approved the undertaking required in 27-18-204; and
(3) the party seeking attachment has made a prima facie showing:
(a) in the case of real property, of the right to attachment and the necessity for seizure;
(b) in the case of personal property:
(i) of the right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice must be posted on the property and in three public places in the county where the property is located; or
(ii) of the right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of the impairment must be presented in open court, and the court shall set forth with specificity the reasons why the delay would seriously impair the remedy sought by the person seeking attachment.

**History:** **En. 93-4304.1 by Sec. 4, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.1; amd. Sec. 678, Ch. 56, L. 2009.**

**27-18-206. Issuance of several writs to different counties.** Several writs may be issued at the same time to the sheriffs of different counties.

**History:** **En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).**

**27-18-207. Alias writs.** Whenever a writ of attachment has been lost or whenever it appears from the sheriff's return of the writ that no property of the party or parties defendant has been levied upon or that the levy made is insufficient to satisfy the full amount of the plaintiff's demand or if, for any reason, the levy of the original writ is void or ineffective, the clerk of the court, upon written demand of the plaintiff or the plaintiff's attorney, shall issue an alias writ in the same form as the original. However, an alias writ may not be issued in an action after the commencement of the trial. A new or additional affidavit or undertaking on attachment may not be required for the issuance of an alias writ. Alias writs of attachment may be issued to the sheriffs of different counties.

**History:** **En. Sec. 1, Ch. 121, L. 1921; re-en. Sec. 9275, R.C.M. 1921; re-en. Sec. 9275, R.C.M. 1935; R.C.M. 1947, 93-4322; amd. Sec. 679, Ch. 56, L. 2009.**

## Part 3
## Writ of Attachment — Execution

**27-18-301. Form and content of writ — defendant's undertaking to prevent levy.** (1) The writ must be directed to the sheriff of any county in which property of the defendant may be located and must require the sheriff to:

(a) attach and safely keep all the property of the defendant within the sheriff's county, not exempt from attachment, or as much of the property as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives the sheriff security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy the demand, besides costs, or in an amount equal to the value of the property that has been or is about to be attached, take the undertaking.

(2) The undertaking must be to the plaintiff in the action and must be approved in writing on the back of the undertaking by the plaintiff or the plaintiff's attorney or, upon their refusal, by the judge of the district court of the same county as the residence of the sheriff.

**History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part); amd. Sec. 40, Ch. 12, L. 1979; amd. Sec. 680, Ch. 56, L. 2009.**

**27-18-302. Filing of undertaking — sheriff's liability.** The sheriff shall thereupon file said undertaking with the clerk of the district court out of which said writ of attachment emanates, and such sheriff shall thereupon cease to be liable under said writ, and any and all actions on such undertaking shall be against the obligors named in such undertaking.

**History: En. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part).**

**27-18-303. Order of execution when several writs against same defendant.** The sheriff shall endorse upon each writ of attachment received by the sheriff the time when the writ was received, specifying the day, hour, and minute. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff.

**History: En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part); amd. Sec. 681, Ch. 56, L. 2009.**

**27-18-304. When sheriff may require written specification of property to be levied upon.** No written specification of property to be levied upon may be required by the sheriff, except as to property referred to in 27-18-403 and 27-18-405(2).

**History: En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part); amd. Sec. 41, Ch. 12, L. 1979.**

**27-18-305. Security for sheriff's costs.** If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

**History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).**

**27-18-306. Sheriff's duty to execute.** The sheriff to whom the writ is directed and delivered shall execute the writ without delay and, if the undertaking mentioned in 27-18-301 is not given, as provided in part 4. The sheriff may levy, from time to time and as often as is necessary, until the amount for which the writ was issued has been secured. The sheriff may not attach more property than appears necessary to satisfy the plaintiff's demand.

**History:** Ap. p. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; Ap. p. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; Sec. 93-4312, R.C.M. 1947; Ap. p. Sec. 94, p. 61, Bannack Stat.; amd. Sec. 123, p. 156, L. 1867; re-en. Sec. 140, p. 55, Cod. Stat. 1871; amd. Sec. 1, p. 47, L. 1874; amd. Sec. 182, p. 83, L. 1877; re-en. Sec. 182, 1st Div. Rev. Stat. 1879; re-en. Sec. 184, 1st Div. Comp. Stat. 1887; re-en. Sec. 893, C. Civ. Proc. 1895; en. Sec. 1, p. 140, L. 1899; re-en. Sec. 6660, Rev. C. 1907; re-en. Sec. 9260, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 540; re-en. Sec. 9260, R.C.M. 1935; R.C.M. 1947, 93-4305(part), 93-4307(part), 93-4312(part); amd. Sec. 682, Ch. 56, L. 2009.

**Cross-References**

Refusal of Sheriff to levy — liability, 7-32-2131.

**27-18-307. Lien of attachment.** All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which the writs are levied, and said lien shall not be affected by any subsequent attachment or by any judgment obtained subsequent thereto.

**History:** En. Sec. 160, p. 59, Cod. Stat. 1871; re-en. Sec. 202, p. 89, L. 1877; re-en. Sec. 202, 1st Div. Rev. Stat. 1879; re-en. Sec. 204, 1st Div. Comp. Stat. 1887; amd. Sec. 920, C. Civ. Proc. 1895; re-en. Sec. 6687, Rev. C. 1907; re-en. Sec. 9288, R.C.M. 1921; re-en. Sec. 9288, R.C.M. 1935; R.C.M. 1947, 93-4335(part).

**27-18-308. Attachment not released by defendant's death.** The death of the defendant does not release the attached property, and a lien of the attachment may be enforced as in the case of other liens.

**History:** En. Sec. 907, C. Civ. Proc. 1895; re-en. Sec. 6674, Rev. C. 1907; re-en. Sec. 9274, R.C.M. 1921; re-en. Sec. 9274, R.C.M. 1935; R.C.M. 1947, 93-4321.

## Part 4
## Manner of Attaching Property

**27-18-401. Sheriff to take custody of books and evidences of title.** The sheriff shall take into custody all books of account, vouchers, and other papers relating to the personal property attached and all evidences of the defendant's title to the real property attached, which the sheriff shall safely keep.

**History:** En. Sec. 898, C. Civ. Proc. 1895; re-en. Sec. 6665, Rev. C. 1907; re-en. Sec. 9265, R.C.M. 1921; re-en. Sec. 9265, R.C.M. 1935; R.C.M. 1947, 93-4312(part); amd. Sec. 683, Ch. 56, L. 2009.

**27-18-402. Real property in defendant's name.** Real property standing upon the records of the county in the name of the defendant must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached and a notice that it is attached.

**History:** En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(1).

**27-18-403. Real property in another's name.** Real property or an interest in real property belonging to the defendant and held by any other person or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property and a notice that the real property and any interest of the defendant in the real property, held by or standing in the name of the other person, naming the person, are attached. The county clerk shall index the attachment when filed in the names both of the defendant and of the person by whom the property is held or in whose name it stands on the record.

**History:** En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(2); amd. Sec. 684, Ch. 56, L. 2009.

**27-18-404. Personal property capable of manual delivery.** Personal property capable of manual delivery must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and such personal property, so in the possession of a third person, may be attached in the same manner as debts or credits and other personal property not capable of manual delivery, as hereinafter provided.

**History:** En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(3).

**27-18-405. Debts, credits, and personal property in control of third person or not capable of manual delivery.** (1) Debts or credits and personal property not capable of manual delivery and personal property in the possession of a third person must be attached by leaving with the person owing the debt or having in the person's possession or under the person's control the credits and personal property or with the person's agent a copy of the writ and a notice that the debts owing by the person to the defendant or the credits and other personal property in the person's possession or under the person's control, belonging to the defendant, are attached in pursuance of the writ.

(2) Upon receiving information in writing from the plaintiff or the plaintiff's attorney that any person has in the person's possession or under the person's control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff shall serve upon that person a copy of the writ and a notice that the credits or other property or debts are attached in pursuance of the writ.

(3) Debts and credits attached may be collected by the sheriff if the collection can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

**History:** (1)En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; Sec. 93-4307, R.C.M. 1947; (2)En. Sec. 97, p. 62, Bannack Stat.; re-en. Sec. 126, p. 157, L. 1867; re-en. Sec. 144, p. 56, Cod. Stat. 1871; re-en. Sec. 186, p. 85, L. 1877; re-en. Sec. 186, 1st Div. Rev. Stat. 1879; re-en. Sec. 188, 1st Div. Comp. Stat. 1887; re-en. Sec. 899, C. Civ. Proc. 1895; re-en. Sec. 6666, Rev. C. 1907; re-en. Sec. 9266, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 543; re-en. Sec. 9266, R.C.M. 1935; Sec. 93-4313, R.C.M. 1947; (3)En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; Sec. 93-4317, R.C.M. 1947; R.C.M. 1947, 93-4307(5), 93-4313, 93-4317(part); amd. Sec. 685, Ch. 56, L. 2009.

**27-18-406. Money, credits, or other property in control of public officer or board.** Money, credits, or other property belonging to or due and owing to another, in the possession of or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or state board or state government, may be attached or garnished while in possession or under control by making service, as provided in this part, upon the clerk of the county or presiding officer of the board of county commissioners, the city clerk or mayor of a municipal corporation, or the clerk of the board of school trustees or presiding officer of the board of trustees.

**History:** En. Sec. 1, p. 159, L. 1901; re-en. Sec. 6692, Rev. C. 1907; re-en. Sec. 9294, R.C.M. 1921; re-en. Sec. 9294, R.C.M. 1935; R.C.M. 1947, 93-4341; amd. Sec. 686, Ch. 56, L. 2009.

**27-18-407. Liability of third persons controlling property or debts and served by sheriff.** All persons having in their possession or under their control any credits or other personal property belonging to the defendant or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice must be, unless the property is delivered or transferred or the debts are paid to the sheriff, liable to the plaintiff for the amount of the credits, property, or debts until the attachment is discharged or any judgment recovered by the plaintiff is satisfied.

**History:** En. Sec. 98, p. 62, Bannack Stat.; re-en. Sec. 127, p. 157, L. 1867; re-en. Sec. 145, p. 56, Cod. Stat. 1871; re-en. Sec. 187, p. 85, L. 1877; re-en. Sec. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 189, 1st Div. Comp. Stat. 1887; re-en. Sec. 900, C. Civ. Proc. 1895; re-en. Sec. 6667, Rev. C. 1907; re-en. Sec. 9267, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 544; re-en. Sec. 9267, R.C.M. 1935; R.C.M. 1947, 93-4314; amd. Sec. 687, Ch. 56, L. 2009.

**27-18-408. Judgments.** Judgments standing in favor of and in the name of the defendant upon the records of the clerk of the district court must be attached by leaving with the said clerk of the district court a copy of the writ and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all attachments of judgments thereunder, and such attachment is binding on the judgment creditor.

**History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(6).**

**27-18-409. Investment securities and stocks.** Investment securities, as defined in the Uniform Commercial Code, may be attached or levied upon only by seizure by the officer making the attachment or levy; provided that such a security which has been surrendered to the issuer may be attached or levied upon by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the security of the defendant is attached in pursuance of such writ. Stocks or shares or interest in stocks or shares of any corporation or company, other than such investment securities, may be attached either by seizure or by leaving with the president or other head of the same or the secretary, cashier, or other managing agent thereof a copy of the writ and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

**History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(4).**

**Cross-References**

U.C.C. — investment securities, Title 30, ch. 8.

**27-18-410. Corporate stock — service on secretary of state.** In addition to the method prescribed in 27-18-409 for attaching stock or shares or interest in the stock of any corporation or company, if the president or other head of the corporation or company or the secretary, cashier, or other managing agent of the corporation or company does not live in or cannot be found in Montana and an affidavit is filed in the office of the clerk of the court in which the action is pending setting forth that the officer or agent does not live in or cannot be found in Montana, the clerk shall make an order directing the writ to be served upon the secretary of state of Montana or, in the secretary of state's absence, upon the deputy secretary of state. When the order has been made, the writ of attachment must be served upon the secretary of state or deputy secretary of state by leaving with the secretary or the deputy a copy of the writ and a notice that the stock or shares or interest in the stock or shares of the corporation or company belonging to the defendant is attached in pursuance of the writ.

**History: En. Sec. 1, Ch. 128, L. 1937; R.C.M. 1947, 93-4308; amd. Sec. 42, Ch. 12, L. 1979; amd. Sec. 688, Ch. 56, L. 2009.**

**27-18-411. Duty of secretary of state — fees.** (1) When service of an order of a writ of execution is made through the secretary of state or the secretary of state's deputy, the secretary of state or the deputy shall promptly mail the copy of the writ, notice, and copy of the order by certified mail to the address of the corporation at its principal home office, as shown by the papers on file in the office of the secretary of state. The office of the secretary of state shall fill out and mail to the clerk of the court in which the action is pending a certificate of the mailing and shall attach the registry receipt for the letter. The order must be effective and the specified assets of the defendant must be attached upon the service of the writ as provided in this section.

(2) At the time the writ is served, the secretary of state shall charge and collect a fee, which must be set and deposited in accordance with 2-15-405. The fee may be claimed as a cost by the plaintiff.

**History: En. Sec. 2, Ch. 128, L. 1937; R.C.M. 1947, 93-4309; amd. Sec. 11, Ch. 396, L. 2001.**

**27-18-412. Interest of defendant in decedent's estate.** The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that the interest is attached. The attachment may not impair the powers of the representative over the property for the purposes of administration. A copy of the writ of attachment and of the notice must also be filed in the office of the clerk of the court in which the estate is being administered, and the personal representative shall report the attachment to the court when any petition for distribution is filed. In the decree made upon the petition, distribution must be ordered to the heir, legatee, or devisee, but delivery of the property must be ordered to the officer making the levy, subject to the claim of the heir, legatee, or devisee or any person claiming under the heir, legatee, or devisee. The property may not be delivered to the officer making the levy until the decree distributing the interest has become final.

**History: En. Sec. 96, p. 61, Bannack Stat.; amd. Sec. 125, p. 157, L. 1867; amd. Sec. 142, p. 55, Cod. Stat. 1871; re-en. Sec. 184, p. 84, L. 1877; re-en. Sec. 184, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 113, L. 1885; re-en. Sec. 186, 1st Div. Comp. Stat. 1887; amd. Sec. 895, C. Civ. Proc. 1895; amd. Sec. 1, p. 139, L. 1899; re-en. Sec. 6662, Rev. C. 1907; amd. Sec. 1, Ch. 85, L. 1911; re-en. Sec. 9262, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 542; amd. Sec. 1, Ch. 71, L. 1931; re-en. Sec. 9262, R.C.M. 1935; amd. Sec. 11-161, Ch. 264, L. 1963; R.C.M. 1947, 93-4307(7); amd. Sec. 689, Ch. 56, L. 2009.**

**27-18-413. Personal property subject to a security interest.** Personal property subject to a security interest may be taken on attachment issued at the suit of a creditor (other than the secured party) of the debtor under the security agreement; but before the property is taken, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt and interest or must deposit the same with the county treasurer of the county in which the financing statement covering the security agreement is filed if such statement is filed with a county clerk and recorder or, if such statement is filed with another filing officer pursuant to law, with such other filing officer, payable to the order of the secured party.

**History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part); amd. Sec. 43, Ch. 12, L. 1979.**

**27-18-414. Duty of secured party.** (1) The secured party under any security agreement of record, upon 15 days' notice in writing served upon the party in person by any creditor of the debtor seeking to satisfy a demand of the creditor against the debtor, must be required to make and file in the office of the county clerk and recorder or other filing officer with whom the financing statement covering the security agreement is filed an affidavit showing the amount of the indebtedness then actually due and owing to the secured party. The affidavit must state the amount of the original obligation for which the security agreement was given as security, all additional advancement of money or property on the principal obligation since the date of the execution of the security agreement, all payments of any kind, whether on principal or interest, made by the debtor to the date of the execution of the affidavit by the secured party, and the balance then remaining due and unpaid to the secured party. If, within 15 days from the service of any demand in writing on the secured party by any creditor of the debtor, the secured party fails, refuses, or neglects to file the affidavit required in this section, the security agreement is of no force or effect as against the creditor upon the seizure of any personal property on attachment.

(2) If the amount shown to be due is paid to the county treasurer, to a filing officer, or to the secured party in satisfaction of the security agreement by any attaching creditor against the debtor, the secured party must be required to surrender to the county treasurer or the filing officer the security agreement and any note or other evidence of indebtedness secured by the security agreement, and the security agreement or other evidence of indebtedness must be delivered by the secured party, county treasurer, or filing officer to the attaching creditor.

**History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part); amd. Sec. 690, Ch. 56, L. 2009.**

## Part 5
## Proceedings in Aid of Attachment

**27-18-501. Examination under oath of defendant or person controlling property or debts — order that property be delivered.** Any person owing debts to the defendant or having in the person's possession or under the person's control any credits or other personal property belonging to the defendant may be required to attend before the court or judge or referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting the defendant's property and may be examined on oath. The court or judge may, after the examination, order personal property capable of manual delivery in the hands or under the control of the person or of the defendant to be delivered to the sheriff on terms that may be just, having reference to any liens on or claims against the property, and a memorandum must be given of all other personal property, containing the amount and description of the property.

**History:** **En. Sec. 99, p. 62, Bannack Stat.; re-en. Sec. 128, p. 158, L. 1867; re-en. Sec. 146, p. 56, Cod. Stat. 1871; re-en. Sec. 188, p. 86, L. 1877; re-en. Sec. 188, 1st Div. Rev. Stat. 1879; re-en. Sec. 190, 1st Div. Comp. Stat. 1887; re-en. Sec. 901, C. Civ. Proc. 1895; re-en. Sec. 6668, Rev. C. 1907; re-en. Sec. 9268, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 545; re-en. Sec. 9268, R.C.M. 1935; R.C.M. 1947, 93-4315; amd. Sec. 691, Ch. 56, L. 2009.**

**27-18-502. Person holding property to give sheriff certificate of defendant's interest.** Upon the application of a sheriff holding a writ of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent of the association or corporation or a debtor of the defendant or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant shall furnish to the sheriff a certificate, under the person's hand, specifying the person's right to a number of shares of the defendant in the stock of the association or corporation, with all dividends declared or encumbrances on the stock, or the amount, nature, and description of the property held for the benefit of the defendant or of the defendant's interest in property held or of the debt or demand owing to the defendant, as the case requires.

**History:** **En. Sec. 896, C. Civ. Proc. 1895; re-en. Sec. 6663, Rev. C. 1907; re-en. Sec. 9263, R.C.M. 1921; re-en. Sec. 9263, R.C.M. 1935; R.C.M. 1947, 93-4310; amd. Sec. 692, Ch. 56, L. 2009.**

**27-18-503. Order to person holding property to submit to examination under oath.** If a person to whom application is made, as prescribed in 27-18-502, refuses to give a certificate or if it is made to appear, by affidavit, to the satisfaction of the court or a judge, that there is reason to suspect that a certificate given by the person is untrue or that it failed fully to set forth the facts required to be shown, the court or judge may make an order directing the person to attend, at a specified time and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named in the order.

**History:** **En. Sec. 897, C. Civ. Proc. 1895; re-en. Sec. 6664, Rev. C. 1907; re-en. Sec. 9264, R.C.M. 1921; re-en. Sec. 9264, R.C.M. 1935; R.C.M. 1947, 93-4311; amd. Sec. 693, Ch. 56, L. 2009.**

## Part 6
## Procedure Following Attachment — Return of Writ

**27-18-601. Sheriff to retain nonperishable attached property and proceeds of sales.** The proceeds and other property attached by the sheriff must be retained by the sheriff to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment.

**History:** **En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part); amd. Sec. 694, Ch. 56, L. 2009.**

**27-18-602. Claim of attached property by third person — plaintiff to indemnify sheriff.** If personal property attached is claimed by a third person, the person shall give notice to the sheriff and deliver to the sheriff an affidavit, stating the person's claim, ownership, and a description of the property. Unless the plaintiff, within 10 days after receiving notice, gives the sheriff a good and sufficient bond to indemnify the sheriff against loss or damage by reason of retaining the property, the sheriff shall deliver the property to the person making the claim.

**History:** **En. Sec. 149, p. 57, Cod. Stat. 1871; re-en. Sec. 191, p. 87, L. 1877; re-en. Sec. 191, 1st Div. Rev. Stat. 1879; re-en. Sec. 193, 1st Div. Comp. Stat. 1887; en. Sec. 906, C. Civ. Proc. 1895; re-en. Sec. 6673, Rev. C. 1907; re-en. Sec. 9273, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 549; re-en. Sec. 9273, R.C.M. 1935; R.C.M. 1947, 93-4320; amd. Sec. 695, Ch. 56, L. 2009.**

**Cross-References**

Indemnity, Title 28, ch. 11, part 3.

**27-18-603. Sheriff's inventory of attached property — cooperation of persons controlling credits or debts.** (1) The sheriff shall make a full inventory of the property attached and return the inventory with the writ. When the sheriff has levied several writs of attachment on the same property, only one inventory must be made.

(2) To enable the sheriff to make the return as to debts and credits attached, the sheriff shall request, at the time of service, the person owing the debt or having the credit to give the sheriff the memorandum, stating the amount and description of each debt or credit. If the memorandum is refused, the sheriff may apply upon 1 day's notice to the court or judge for an order to compel the memorandum to be given. If the order is granted, it must also direct the payment of costs of the motion by the person refusing.

**History: En. Sec. 100, p. 63, Bannack Stat.; amd. Sec. 129, p. 158, L. 1867; re-en. Sec. 147, p. 57, Cod. Stat. 1871; re-en. Sec. 189, p. 86, L. 1877; re-en. Sec. 189, 1st Div. Rev. Stat. 1879; re-en. Sec. 191, 1st Div. Comp. Stat. 1887; re-en. Sec. 902, C. Civ. Proc. 1895; re-en. Sec. 6669, Rev. C. 1907; re-en. Sec. 9269, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 546; re-en. Sec. 9269, R.C.M. 1935; R.C.M. 1947, 93-4316; amd. Sec. 696, Ch. 56, L. 2009.**

**27-18-604. Sheriff's return of writ.** The sheriff shall return the writ of attachment with the summons if issued at the same time, otherwise, within 20 days after the writ's receipt, with a certificate of the sheriff's proceedings endorsed on or attached to the writ.

**History: En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part); amd. Sec. 697, Ch. 56, L. 2009.**

## Part 7
## Methods of Defending Against Attachment

**27-18-701. Right to hearing following seizure without notice — notice of right.** When a writ has been issued upon real property or upon the showing specified in 27-18-205(3)(b)(ii), the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice of the right to a postseizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located.

**History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(1).**

**27-18-702. When writ quashed.** At the hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ must be quashed if the court makes a preliminary finding that:

(1) the plaintiff cannot establish the prima facie validity of the plaintiff's claim; or

(2) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

**History: En. 93-4304.2 by Sec. 5, Ch. 299, L. 1977; R.C.M. 1947, 93-4304.2(2); amd. Sec. 698, Ch. 56, L. 2009.**

**27-18-703 through 27-18-710 reserved.**

**27-18-711. Motion to discharge writ improperly issued.** The defendant may also, at any time either before or after the release of the attached property or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to a judge thereof that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

**History: En. Sec. 138, p. 160, L. 1867; re-en. Sec. 156, p. 59, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 198, p. 89, L. 1877; re-en. Sec. 198, 1st Div. Rev. Stat. 1879; re-en. Sec. 200, 1st Div. Comp. Stat. 1887; en. Sec. 914, C. Civ. Proc. 1895; re-en. Sec. 6681, Rev. C. 1907; re-en. Sec. 9282, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 556; re-en. Sec. 9282, R.C.M. 1935; R.C.M. 1947, 93-4329.**

**27-18-712. Use of affidavits to support or oppose motion.** If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was made.

**History: En. Sec. 139, p. 160, L. 1867; re-en. Sec. 157, p. 59, Cod. Stat. 1871; re-en. Sec. 199, p. 89, L. 1877; re-en. Sec. 199, 1st Div. Rev. Stat. 1879; re-en. Sec. 201, 1st Div. Comp. Stat. 1887; re-en. Sec. 915, C. Civ. Proc. 1895; re-en. Sec. 6682, Rev. C. 1907; re-en. Sec. 9283, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 557; re-en. Sec. 9283, R.C.M. 1935; R.C.M. 1947, 93-4330.**

**27-18-713. Decision of court.** If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend the plaintiff's affidavit or undertaking.

**History:** En. Sec. 140, p. 160, L. 1867; re-en. Sec. 158, p. 59, Cod. Stat. 1871; re-en. Sec. 200, p. 89, L. 1877; re-en. Sec. 200, 1st Div. Rev. Stat. 1879; re-en. Sec. 202, 1st Div. Comp. Stat. 1887; amd. Sec. 916, C. Civ. Proc. 1895; re-en. Sec. 6683, Rev. C. 1907; re-en. Sec. 9284, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 558; re-en. Sec. 9284, R.C.M. 1935; R.C.M. 1947, 93-4331; amd. Sec. 699, Ch. 56, L. 2009.

**27-18-714 reserved.**

**27-18-715. Exception to plaintiff's sureties.** At any time within 30 days after the service of summons, the defendant may take exception to the sufficiency of the sureties. If the defendant fails to do so, the defendant is considered to have waived all objections to the sureties.

**History:** En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(2); amd. Sec. 700, Ch. 56, L. 2009.

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-18-716. Justification of sureties.** When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 days or more than 10 days, must justify before a judge of the district court, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the judge shall issue an order vacating the writ of attachment.

**History:** En. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 539; re-en. Sec. 9259, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967; amd. Sec. 3, Ch. 299, L. 1977; R.C.M. 1947, 93-4304(3).

**27-18-717 through 27-18-720 reserved.**

**27-18-721. Proceedings to release attachment.** Whenever the defendant has appeared in the action, the defendant may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending or to the judge for an order to discharge the attachment, wholly or in part. Upon the execution of the undertaking mentioned in 27-18-722, an order may be made releasing from the operation of the attachment any or all of the property attached. All of the property released and all of the proceeds of the sale of the property must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

**History:** En. Sec. 108, p. 65, Bannack Stat.; re-en. Sec. 136, p. 159, L. 1867; amd. Sec. 154, p. 58, Cod. Stat. 1871; re-en. Sec. 196, p. 88, L. 1877; re-en. Sec. 196, 1st Div. Rev. Stat. 1879; re-en. Sec. 198, 1st Div. Comp. Stat. 1887; amd. Sec. 912, C. Civ. Proc. 1895; re-en. Sec. 6679, Rev. C. 1907; re-en. Sec. 9280, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 554; re-en. Sec. 9280, R.C.M. 1935; R.C.M. 1947, 93-4327; amd. Sec. 701, Ch. 56, L. 2009.

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-18-722. Defendant's undertaking — justification of sureties.** Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders or householders in the state, to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the proper officer to be applied to the payment of the judgment or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge making the order may fix the sum for which the undertaking shall be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released without their justification, if the same be required.

**History:** En. Sec. 109, p. 65, Bannack Stat.; en. Sec. 137, p. 159, L. 1867; amd. Sec. 2, p. 67, L. 1869; re-en. Sec. 155, p. 58, Cod. Stat. 1871; amd. Sec. 1, p. 48, L. 1874; amd. Sec. 197, p. 88, L. 1877; re-en. Sec. 197, 1st Div. Rev. Stat. 1879; re-en. Sec. 199, 1st Div. Comp. Stat. 1887; amd. Sec. 913, C. Civ. Proc. 1895; re-en. Sec. 6680, Rev. C. 1907; re-en. Sec. 9281, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 555; re-en. Sec. 9281, R.C.M. 1935; R.C.M. 1947, 93-4328.

**27-18-723 and 27-18-724 reserved.**

**27-18-725. Motion to vacate or modify writ or increase security.** The defendant or a person who has acquired a lien upon or interest in the defendant's property after it was attached may, at any time before the actual application of the attached property or the proceeds of the property to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment or to increase the security given by the plaintiff or for one or more of those forms of release together or in the alternative.

**History: En. Sec. 917, C. Civ. Proc. 1895; re-en. Sec. 6684, Rev. C. 1907; re-en. Sec. 9285, R.C.M. 1921; re-en. Sec. 9285, R.C.M. 1935; R.C.M. 1947, 93-4332; amd. Sec. 702, Ch. 56, L. 2009.**

**27-18-726. Proceedings on motion.** An application specified in 27-18-725 may be founded only upon:

(1) the papers upon which the writ was granted, in which case it must be made to the court or judge, with or without notice as the court or judge considers proper; or

(2) proof by affidavits on the part of the defendant or a person who has acquired a lien upon or interest in the defendant's property after it was attached, in which case it must be made to the court or judge upon notice and may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment.

**History: En. Sec. 918, C. Civ. Proc. 1895; re-en. Sec. 6685, Rev. C. 1907; re-en. Sec. 9286, R.C.M. 1921; re-en. Sec. 9286, R.C.M. 1935; R.C.M. 1947, 93-4333; amd. Sec. 703, Ch. 56, L. 2009.**

**27-18-727 through 27-18-730 reserved.**

**27-18-731. Filing of order discharging or releasing attachment of real property.** Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order must be filed in the office of the county clerk in which the notice of the attachment has been filed and be indexed in like manner.

**History: En. Sec. 114, p. 66, Bannack Stat.; re-en. Sec. 141, p. 160, L. 1867; re-en. Sec. 159, p. 59, Cod. Stat. 1871; re-en. Sec. 201, p. 89, L. 1877; re-en. Sec. 201, 1st Div. Rev. Stat. 1879; re-en. Sec. 203, 1st Div. Comp. Stat. 1887; amd. Sec. 919, C. Civ. Proc. 1895; re-en. Sec. 6686, Rev. C. 1907; re-en. Sec. 9287, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 559; re-en. Sec. 9287, R.C.M. 1935; R.C.M. 1947, 93-4334(part).**

**27-18-732. Release of attachment of real property by clerk when action not prosecuted — filing.** If a writ of attachment has been levied on real property, as provided in part 4, and no proceedings have been taken in the action in which the attachment was issued for a period of 5 years, the clerk of court shall, upon application of the defendant or the record owner of such real property, issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

**History: En. Sec. 1, Ch. 97, L. 1965; R.C.M. 1947, 93-4331.1.**

## Part 8
## Sale of Attached Property

**27-18-801. Sheriff to sell perishable property.** If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution.

**History: En. Sec. 101, p. 63, Bannack Stat.; re-en. Sec. 130, p. 158, L. 1867; re-en. Sec. 148, p. 57, Cod. Stat. 1871; re-en. Sec. 190, p. 86, L. 1877; re-en. Sec. 190, 1st Div. Rev. Stat. 1879; re-en. Sec. 192, 1st Div. Comp. Stat. 1887; re-en. Sec. 903, C. Civ. Proc. 1895; re-en. Sec. 6670, Rev. C. 1907; re-en. Sec. 9270, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 547; re-en. Sec. 9270, R.C.M. 1935; R.C.M. 1947, 93-4317(part).**

**27-18-802. Authority of court to order sale of property.** Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactorily to the court or a judge thereof that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution and the proceeds to be deposited in the court to abide the judgment in the action.

**History: En. Sec. 437, p. 132, Bannack Stat.; re-en. Sec. 594, p. 157, Cod. Stat. 1871; re-en. Sec. 524, p. 177, L. 1877; re-en. Sec. 524, 1st Div. Rev. Stat. 1879; re-en. Sec. 541, 1st Div. Comp. Stat. 1887; amd. Sec. 904, C. Civ. Proc. 1895; re-en. Sec. 6671, Rev. C. 1907; re-en. Sec. 9271, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 548; re-en. Sec. 9271, R.C.M. 1935; R.C.M. 1947, 93-4318.**

**27-18-803. Notice of application for order to sell.** Application for the order must be upon notice to the adverse party or the party's attorney that the court or judge, considering the nature and condition of the property, may direct. If it appears to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice.

**History: En. Sec. 905, C. Civ. Proc. 1895; re-en. Sec. 6672, Rev. C. 1907; re-en. Sec. 9272, R.C.M. 1921; re-en. Sec. 9272, R.C.M. 1935; R.C.M. 1947, 93-4319; amd. Sec. 704, Ch. 56, L. 2009.**

**27-18-804. Sale of property subject to a security interest — disposition of proceeds, security agreement.** (1) When the property taken under 27-18-413 is sold under process, the officer levying the writ must apply the proceeds of the sale as follows:

(a) to the repayment of the sum paid to the secured party, with interest from the date of such payment; and

(b) the balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

(2) In the event the property is sold under attachment, such attaching creditor shall be required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

**History: En. Sec. 1, Ch. 111, L. 1921; re-en. Sec. 9291, R.C.M. 1921; re-en. Sec. 9291, R.C.M. 1935; amd. Sec. 11-162, Ch. 264, L. 1963; R.C.M. 1947, 93-4338(part).**

**Cross-References**

U.C.C. — secured transactions, Title 30, ch. 9A.

## Part 9
## Judgment and Subsequent Procedure

**27-18-901. Judgment when debt not yet due.** (1) On the trial of any cause brought under the provisions of 27-18-203, judgment may be rendered on any such debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment, as provided in that section. Any such judgment shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt shall have become due.

(2) The defendant may, by plea, put in issue the matter alleged in the affidavit required in 27-18-203, and if the plaintiff fails to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

**History: En. Sec. 1, p. 141, L. 1899; re-en. Sec. 6658, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1911; re-en. Sec. 9258, R.C.M. 1921; re-en. Sec. 9258, R.C.M. 1935; R.C.M. 1947, 93-4303(part).**

**27-18-902. Procedure when defendant recovers judgment.** If the defendant recovers judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands must be delivered to the defendant or the defendant's agent. The order of attachment must be discharged and the property released from attachment.

**History: En. Sec. 106, p. 64, Bannack Stat.; re-en. Sec. 135, p. 159, L. 1867; re-en. Sec. 153, p. 58, Cod. Stat. 1871; re-en. Sec. 195, p. 88, L. 1877; re-en. Sec. 195, 1st Div. Rev. Stat. 1879; re-en. Sec. 197, 1st Div. Comp. Stat. 1887; re-en. Sec. 911, C. Civ. Proc. 1895; re-en. Sec. 6678, Rev. C. 1907; re-en. Sec. 9279, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 553; re-en. Sec. 9279, R.C.M. 1935; R.C.M. 1947, 93-4326; amd. Sec. 705, Ch. 56, L. 2009.**

**27-18-903. Judgment for plaintiff — disposition of attached property and proceeds of sales.** If judgment is recovered by the plaintiff, the sheriff shall satisfy the judgment out of the property attached by the sheriff that has not been delivered to the defendant or claimant, as provided in this part, or subjected to execution on another judgment recovered prior to the issuing of the attachment, if it is sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property or property ordered by the court or judge to be sold by the sheriff, or of any debts or credits collected by the sheriff, or as much of the proceeds, debts, or credits that is necessary to satisfy the judgment;

(2) if any balance remains due and an execution has been issued on the judgment, by selling under the execution as much of the property, real or personal, that may be necessary to satisfy the balance, if the sheriff retains enough property for that purpose. Notices of the sales must be given and the sales must be conducted as in other cases of sales on execution.

**History:** En. Sec. 103, p. 64, Bannack Stat.; re-en. Sec. 132, p. 159, L. 1867; re-en. Sec. 150, p. 58, Cod. Stat. 1871; re-en. Sec. 192, p. 87, L. 1877; re-en. Sec. 192, 1st Div. Rev. Stat. 1879; re-en. Sec. 194, 1st Div. Comp. Stat. 1887; re-en. Sec. 908, C. Civ. Proc. 1895; re-en. Sec. 6675, Rev. C. 1907; re-en. Sec. 9276, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 550; re-en. Sec. 9276, R.C.M. 1935; R.C.M. 1947, 93-4323; amd. Sec. 706, Ch. 56, L. 2009.

**27-18-904. Delivery of excess property and proceeds to defendant.** Whenever the judgment has been paid, the sheriff, upon reasonable demand, shall deliver to the defendant the attached property remaining in the sheriff's possession and any proceeds of property attached that are not applied on the judgment.

**History:** En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879; re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part); amd. Sec. 707, Ch. 56, L. 2009.

**27-18-905. Execution of balance due on judgment.** If, after selling all property attached by the sheriff remaining in the sheriff's possession and applying the proceeds, together with the proceeds of any debt or credit collected by the sheriff, deducting the sheriff's fee, to the payment of the judgment, any balance must remain due, and the sheriff shall proceed to collect the balance in the same manner as upon an execution in other cases.

**History:** En. Sec. 104, p. 64, Bannack Stat.; re-en. Sec. 133, p. 159, L. 1867; re-en. Sec. 151, p. 58, Cod. Stat. 1871; re-en. Sec. 193, p. 87, L. 1877; re-en. Sec. 193, 1st Div. Rev. Stat. 1879; re-en. Sec. 195, 1st Div. Comp. Stat. 1887; re-en. Sec. 909, C. Civ. Proc. 1895; re-en. Sec. 6676, Rev. C. 1907; re-en. Sec. 9277, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 551; re-en. Sec. 9277, R.C.M. 1935; R.C.M. 1947, 93-4324(part); amd. Sec. 708, Ch. 56, L. 2009.

**27-18-906. Procedure when execution returned unsatisfied.** If the execution is returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to 27-18-301 or 27-18-722 or the plaintiff may proceed, as in other cases, upon the return of an execution.

**History:** En. Sec. 105, p. 64, Bannack Stat.; re-en. Sec. 134, p. 159, L. 1867; re-en. Sec. 152, p. 58, Cod. Stat. 1871; re-en. Sec. 194, p. 88, L. 1877; re-en. Sec. 194, 1st Div. Rev. Stat. 1879; re-en. Sec. 196, 1st Div. Comp. Stat. 1887; re-en. Sec. 910, C. Civ. Proc. 1895; re-en. Sec. 6677, Rev. C. 1907; re-en. Sec. 9278, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 552; re-en. Sec. 9278, R.C.M. 1935; R.C.M. 1947, 93-4325; amd. Sec. 709, Ch. 56, L. 2009.

## Parts 10 through 14 reserved

## Part 15

## Attachment in Justice's Court

**27-18-1501. Justice's authority to issue writ.** A writ to attach the property of the defendant may be issued by the justice at the time of or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in 27-18-202.

**History:** En. Sec. 568, p. 155, Bannack Stat.; re-en. Sec. 674, p. 172, Cod. Stat. 1871; re-en. Sec. 734, 1st Div. Rev. Stat. 1879; re-en. Sec. 754, 1st Div. Comp. Stat. 1887; amd. Sec. 1560, C. Civ. Proc. 1895; re-en. Sec. 7026, Rev. C. 1907; re-en. Sec. 9659, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 866; re-en. Sec. 9659, R.C.M. 1935; amd. Sec. 6, Ch. 299, L. 1977; R.C.M. 1947, 93-6908.

**27-18-1502. Plaintiff's undertaking.** Before issuing the writ, the justice shall require a written undertaking in due form on the part of the plaintiff, except a local government, with two or more sureties, in a sum of not less than $50 or more than $300, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

**History:** En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part); amd. Sec. 710, Ch. 56, L. 2009; amd. Sec. 5, Ch. 346, L. 2009.

**27-18-1503. Exception to sureties — justification.** Within 2 days after or at any time before the service of the writ of attachment upon the defendant, the defendant may take exception to the sufficiency of the sureties, and if the defendant fails to do so, the defendant is considered to have waived all objections to the sureties. When an exception is taken, the sureties shall, within 3 days after notice by the defendant of not less than 1 day, justify before the justice, and upon failure to justify or if others in their place fail to justify at the time and place appointed, the justice shall make an order vacating the writ of attachment.

**History: En. Sec. 569, p. 155, Bannack Stat.; re-en. Sec. 675, p. 172, Cod. Stat. 1871; re-en. Sec. 735, 1st Div. Rev. Stat. 1879; re-en. Sec. 755, 1st Div. Comp. Stat. 1887; amd. Sec. 1561, C. Civ. Proc. 1895; re-en. Sec. 7027, Rev. C. 1907; amd. Sec. 1, Ch. 86, L. 1911; re-en. Sec. 9660, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 867; re-en. Sec. 9660, R.C.M. 1935; R.C.M. 1947, 93-6909(part); amd. Sec. 711, Ch. 56, L. 2009.**

**27-18-1504. Form and content of writ — defendant's undertaking to prevent levy.** (1) The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require the sheriff or constable to:

(a) attach and safely keep all the property of the defendant in the county, not exempt from attachment, or as much of the property as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives security by the undertaking of two sufficient sureties in an amount sufficient to satisfy the demand, besides costs, take the undertaking.

(2) The undertaking must be to the plaintiff and must be approved in writing on the back of the undertaking by the plaintiff or the plaintiff's attorney or, upon their refusal, by the justice issuing the writ.

**History: En. Sec. 570, p. 155, Bannack Stat.; re-en. Sec. 676, p. 172, Cod. Stat. 1871; re-en. Sec. 736, 1st Div. Rev. Stat. 1879; re-en. Sec. 756, 1st Div. Comp. Stat. 1887; re-en. Sec. 1562, C. Civ. Proc. 1895; amd. Sec. 2, p. 141, L. 1899; re-en. Sec. 7028, Rev. C. 1907; re-en. Sec. 9661, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 868; re-en. Sec. 9661, R.C.M. 1935; R.C.M. 1947, 93-6910; amd. Sec. 44, Ch. 12, L. 1979; amd. Sec. 712, Ch. 56, L. 2009.**

**27-18-1505. Security for sheriff's costs.** If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

**History: En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; R.C.M. 1947, 16-2714(part).**

**27-18-1506. Applicability of procedure in district court.** Part 1; 27-18-207, 27-18-303 through 27-18-308; parts 4, 5, and 6; 27-18-711 through 27-18-713, 27-18-721 through 27-18-732; and parts 8 and 9, except 27-18-901, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" whenever the writ is directed to a constable, and the word "justice" substituted for "judge".

**History: En. Sec. 571, p. 155, Bannack Stat.; re-en. Sec. 677, p. 172, Cod. Stat. 1871; re-en. Sec. 737, 1st Div. Rev. Stat. 1879; re-en. Sec. 757, 1st Div. Comp. Stat. 1887; re-en. Sec. 1563, C. Civ. Proc. 1895; re-en. Sec. 7029, Rev. C. 1907; re-en. Sec. 9662, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 869; re-en. Sec. 9662, R.C.M. 1935; R.C.M. 1947, 93-6911; amd. Sec. 45, Ch. 12, L. 1979.**

## CHAPTER 19
## INJUNCTIONS

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27-19-104. Contents of complaint — action for injunction by an association.
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27-19-311. Repealed.

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27-19-313. Renumbered 27-19-307.
27-19-314. Temporary restraining order.
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27-19-401. Application to dissolve or modify injunction.
27-19-402. Repealed.
27-19-403. New undertaking for security following hearing.
27-19-404. When injunction dissolved or modified.
27-19-405. Enjoined party's undertaking for security upon dissolution.
27-19-406. Costs upon dissolution.

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**Chapter Cross-References**

Injunctive relief against unlawful termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

## Part 1
## General Provisions

**27-19-101. Definition of injunction — by whom granted.** An injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court in which the action is brought or by a judge thereof and, when made by a judge, be enforced as the order of the court.

**History: En. Sec. 82, p. 58, Bannack Stat.; amd. Sec. 111, p. 154, L. 1867; re-en. Sec. 128, p. 52, Cod. Stat. 1871; re-en. Sec. 170, p. 79, L. 1877; re-en. Sec. 170, 1st Div. Rev. Stat. 1879; re-en. Sec. 172, 1st Div. Comp. Stat. 1887; amd. Sec. 870, C. Civ. Proc. 1895; re-en. Sec. 6642, Rev. C. 1907; re-en. Sec. 9240, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 525; re-en. Sec. 9240, R.C.M. 1935; R.C.M. 1947, 93-4201.**

**27-19-102. When final injunction may be granted to prevent breach of obligation.** Except where otherwise provided by the provisions of the code governing specific and preventive relief (chapter 1, part 4, of this title and Title 28, chapter 2, parts 16 and 17), a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant where:

(1) pecuniary compensation would not afford adequate relief;

(2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

(3) the restraint is necessary to prevent a multiplicity of judicial proceedings; or

(4) the obligation arises from a trust.

**History: En. Sec. 4462, Civ. C. 1895; re-en. Sec. 6120, Rev. C. 1907; re-en. Sec. 9241, R.C.M. 1921; Cal. Civ. C. Sec. 3422; Field Civ. C. Sec. 1911; re-en. Sec. 9241, R.C.M. 1935; R.C.M. 1947, 93-4202.**

**27-19-103. When injunction may not be granted.** An injunction cannot be granted:

(1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

(2) to stay proceedings in a court of the United States;

(3) to stay proceedings in another state upon a judgment of a court of that state;

(4) to prevent the execution of a public statute by officers of the law for the public benefit;

(5) to prevent the breach of a contract the performance of which would not be specifically enforced;

(6) to prevent the exercise of a public or private office, in a lawful manner, by the person in possession;

(7) to prevent a legislative act by a municipal corporation;

(8) in labor disputes under any other or different circumstances or conditions than if the controversy were of another or different character or between parties neither or none of whom were laborers or interested in labor questions; or

(9) to prevent the secretary of state from issuing a temporary or final administrative rule before the administrative rule is issued.

**History: En. Sec. 4463, Civ. C. 1895; re-en. Sec. 6121, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1913; re-en. Sec. 9242, R.C.M. 1921; Cal. Civ. C. Sec. 3423; Based on Field Civ. C. Sec. 1912; re-en. Sec. 9242, R.C.M. 1935; R.C.M. 1947, 93-4203; amd. Sec. 1, Ch. 79, L. 2023.**

**27-19-104. Contents of complaint — action for injunction by an association.** Whenever an action for injunctive relief is initiated by a citizens' group or other public interest association and it appears by the complaint that there is an injury to a property or civil right of individual members of the association, which injury is distinguishable from an injury to the public generally, the names and addresses of injured members and a statement of the injury shall be provided in the complaint. An injunction may not be granted unless such information is provided in the complaint.

**History: En. 93-4204.1 by Sec. 1, Ch. 170, L. 1977; R.C.M. 1947, 93-4204.1.**

**27-19-105. Form and scope of injunction or restraining order.** An order granting an injunction or a restraining order shall:

(1) set forth the reasons for its issuance;

(2) be specific in its terms;

(3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and

(4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**History: En. Sec. 6, Ch. 399, L. 1979.**

## Part 2
## Availability of Preliminary Injunction

**27-19-201. When preliminary injunction may be granted — when injunction order may be granted — legislative intent.** (1) A preliminary injunction order or temporary restraining order may be granted when the applicant establishes that:

(a) the applicant is likely to succeed on the merits;

(b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;

(c) the balance of equities tips in the applicant's favor; and

(d) the order is in the public interest.

(2) An injunction order may be granted in either of the following cases between persons, not including a person being sued in that person's official capacity:

(a) when it appears that the adverse party, while the action is pending, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, in which case an injunction order may be granted to restrain the removal or disposition; or

(b) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15.

(3) The applicant for an injunction provided for in this section bears the burden of demonstrating the need for an injunction order.

(4) (a) It is the intent of the legislature that the language in subsection (1) mirror the federal preliminary injunction standard, and that interpretation and application of subsection (1) closely follow United States supreme court case law.

(b) When conducting the preliminary injunction analysis, the court shall examine the four criteria in subsection (1) independently. The court may not use a sliding scale test, the serious questions test, flexible interplay, or another federal circuit modification to the criteria.

**History: En. Sec. 83, p. 58, Bannack Stat.; re-en. Sec. 112, p. 154, L. 1867; re-en. Sec. 129, p. 52, Cod. Stat. 1871; re-en. Sec. 171, p. 79, L. 1877; re-en. Sec. 171, 1st Div. Rev. Stat. 1879; re-en. Sec. 173, 1st Div. Comp. Stat. 1887; amd. Sec. 871, C. Civ. Proc. 1895; re-en. Sec. 6643, Rev. C. 1907; re-en. Sec. 9243, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 526; re-en. Sec. 9243, R.C.M. 1935; R.C.M. 1947, 93-4204; amd. Sec. 1, Ch. 399, L. 1979; amd. Sec. 2, Ch. 180, L. 1981; amd. Sec. 1, Ch. 526, L. 1985; amd. Sec. 3, Ch. 350, L. 1995; amd. Sec. 1, Ch. 43, L. 2023; amd. Sec. 1, Ch. 20, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 20, L. 2025. Amendment effective March 25, 2025.

**Cross-References**
Affidavits, Title 26, ch. 1, part 10.
Violation of order of protection — penalty, 45-5-626.
Montana Hazardous Waste and Underground Storage Tank Act — injunctions, 75-10-414.

**27-19-202. Preliminary injunction pending action for restraint of trade.** Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending is authorized to issue an injunction to restrain any such person from doing business in this state pending the final determination of said action so instituted.

**History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(1).**

**Cross-References**
Unfair trade practices — injunction, 30-14-222.

**27-19-203. Preliminary injunction pending action by public service commission.** When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel or the interested person or the interested person's legal representative, a district court may, upon the application of the consumer counsel or the interested person or the interested person's legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. The restraining order may prohibit the respondent and the respondent's agents, employees, licensees, and assignees from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order should not become an injunction for the duration of the proceeding before the commission.

**History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R.C.M. 1921; re-en. Sec. 9254, R.C.M. 1935; amd. Sec. 56, Ch. 100, L. 1973; amd. Sec. 3, Ch. 138, L. 1975; R.C.M. 1947, 93-4215(2); amd. Sec. 713, Ch. 56, L. 2009.**

**27-19-204. Issuance without bond.** The injunction provided for in 27-19-202 shall issue without bond, upon the application of the county attorney of the county in which the action is pending or upon the application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action described in 27-19-202 has been instituted and is pending.

**History: En. Sec. 2, Ch. 93, L. 1905; re-en. Sec. 6655, Rev. C. 1907; re-en. Sec. 9255, R.C.M. 1921; re-en. Sec. 9255, R.C.M. 1935; amd. Sec. 57, Ch. 100, L. 1973; R.C.M. 1947, 93-4216; amd. Sec. 46, Ch. 12, L. 1979.**

## Part 3
## Procedure for Obtaining Preliminary Injunction

**27-19-301. Notice of application — hearing.** (1) No preliminary injunction order may be issued without reasonable notice to the adverse party of the time and place that application for the injunction order was made.

(2) Before granting an injunction order, the court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should be granted, and the adverse party may in the meantime be restrained as provided in 27-19-314.

**History: (1)En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M. 1935; R.C.M. 1947, 93-4206(part); (2)En. Sec. 3, Ch. 399, L. 1979; amd. Sec. 2, Ch. 399, L. 1979; amd. Sec. 2, Ch. 43, L. 2023.**

**27-19-302. Repealed.** Sec. 18, Ch. 399, L. 1979.

**History: En. Sec. 88, p. 59, Bannack Stat.; amd. Sec. 117, p. 155, L. 1867; re-en. Sec. 134, p. 53, Cod. Stat. 1871; re-en. Sec. 176, p. 81, L. 1877; re-en. Sec. 176, 1st Div. Rev. Stat. 1879; re-en. Sec. 178, 1st Div. Comp. Stat. 1887; amd. Sec. 881, C. Civ. Proc. 1895; re-en. Sec. 6653, Rev. C. 1907; re-en. Sec. 9253, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 531; re-en. Sec. 9253, R.C.M. 1935; R.C.M. 1947, 93-4214.**

**27-19-303. Time of granting injunction, evidence required.** (1) The injunction order may be granted after the hearing at any time before judgment.

(2) Upon the hearing each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless:

(a) they are duly verified; and

(b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

(3) Upon the hearing of a contested application for an injunction order, a verified answer has the effect only of an affidavit.

**History: (1), (2)En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; R.C.M. 1947, 93-4205(part); (3)En. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; R.C.M. 1947, 93-4210(part); Sec. 27-19-312, MCA 1979; redes. 27-19-303(3) by Code Commissioner, 1979; amd. Sec. 47, Ch. 12, L. 1979; amd. Sec. 4, Ch. 399, L. 1979.**

**Cross-References**

Affidavits, Title 26, ch. 1, part 10.

**27-19-304. Repealed.** Sec. 18, Ch. 399, L. 1979.

**History: En. Sec. 84, p. 58, Bannack Stat.; re-en. Sec. 113, p. 154, L. 1867; re-en. Sec. 130, p. 52, Cod. Stat. 1871; re-en. Sec. 172, p. 79, L. 1877; re-en. Sec. 172, 1st Div. Rev. Stat. 1879; re-en. Sec. 174, 1st Div. Comp. Stat. 1887; amd. Sec. 872, C. Civ. Proc. 1895; re-en. Sec. 6644, Rev. C. 1907; re-en. Sec. 9244, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 527; re-en. Sec. 9244, R.C.M. 1935; R.C.M. 1947, 93-4205(part).**

**27-19-305. Renumbered 27-19-314.** Code Commissioner, 1979.

**27-19-306. Security for damages.** (1) Subject to 25-1-402, on granting an injunction or restraining order, the judge shall require a written undertaking to be given by the applicant for the payment of the costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Except as provided in subsection (2), the undertaking:

(a) must be fixed at a sum that the judge considers proper; and

(b) may be waived:

(i) in domestic disputes; or

(ii) in the interest of justice.

(2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity, the judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking must be set in an amount that includes all of the wages, salaries, and benefits of the employees of the party enjoined or restrained during the anticipated time that the injunction or restraining order will be in effect. The amount of the written undertaking may not exceed $50,000 unless the interests of justice require. The written undertaking must be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries, and benefits sustained by reason of the injunction or restraining order.

(b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to construction, mining, timber, and grazing operations.

(3) Within 30 days after the service of the injunction, the party enjoined may object to the sufficiency of the sureties. If the party enjoined fails to object, all objections to the sufficiency of the sureties are waived. When objected to, the applicant's sureties, upon notice to the party enjoined of not less than 2 or more than 5 days, shall justify before a judge or clerk in the same manner as upon bail on arrest. If the sureties fail to justify or if others in their place fail to justify at the time and place appointed, the order granting the injunction must be dissolved.

(4) This section does not prohibit a person who is wrongfully enjoined from filing an action for any claim for relief otherwise available to that person in law or equity and does not limit the recovery that may be obtained in that action.

**History: En. Sec. 86, p. 59, Bannack Stat.; re-en. Sec. 115, p. 154, L. 1867; re-en. Sec. 132, p. 52, Cod. Stat. 1871; re-en. Sec. 174, p. 79, L. 1877; re-en. Sec. 174, 1st Div. Rev. Stat. 1879; re-en. Sec. 176, 1st Div. Comp. Stat. 1887; en. Sec. 874, C. Civ. Proc. 1895; re-en. Sec. 6646, Rev. C. 1907; re-en. Sec. 9246, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 529; re-en. Sec. 9246, R.C.M. 1935; amd. Sec. 53, Ch. 535, L. 1975; R.C.M. 1947, 93-4207; amd. Sec. 48, Ch. 12, L. 1979; amd. Sec. 8, Ch. 399, L. 1979; amd. Sec. 1, Ch. 575, L. 1995.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**27-19-307. New undertaking for security following hearing.** On a hearing to show cause, the judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with similar sureties and to the same effect as upon granting of the original order. The persons executing the new undertaking become liable as if they had executed the surety upon the granting of the original order. The persons who executed the original undertaking remain liable only until the new undertaking is given and approved. A new undertaking must comply with the provisions of 27-19-306.

**History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 13, Ch. 399, L. 1979; MCA 1979, 27-19-313; redes. 27-19-307 by Code Commissioner, 1979; amd. Sec. 2, Ch. 575, L. 1995.**

**27-19-308 through 27-19-310 reserved.**

**27-19-311. Repealed.** Sec. 18, Ch. 399, L. 1979.

**History: En. Sec. 87, p. 59, Bannack Stat.; re-en. Sec. 116, p. 155, L. 1867; re-en. Sec. 133, p. 52, Cod. Stat. 1871; re-en. Sec. 175, p. 81, L. 1877; re-en. Sec. 175, 1st Div. Rev. Stat. 1879; re-en. Sec. 177, 1st Div. Comp. Stat. 1887; amd. Sec. 875, C. Civ. Proc. 1895; re-en. Sec. 6647, Rev. C. 1907; re-en. Sec. 9247, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 530; re-en. Sec. 9247, R.C.M. 1935; R.C.M. 1947, 93-4208.**

**27-19-312. Renumbered 27-19-303(3).** Code Commissioner, 1979.

**27-19-313. Renumbered 27-19-307.** Code Commissioner, 1979.

**27-19-314. Temporary restraining order.** Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

**History: En. Sec. 85, p. 59, Bannack Stat.; re-en. Sec. 114, p. 154, L. 1867; re-en. Sec. 131, p. 52, Cod. Stat. 1871; re-en. Sec. 173, p. 79, L. 1877; re-en. Sec. 173, 1st Div. Rev. Stat. 1879; re-en. Sec. 175, 1st Div. Comp. Stat. 1887; en. Sec. 873, C. Civ. Proc. 1895; re-en. Sec. 6645, Rev. C. 1907; re-en. Sec. 9245, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 528; re-en. Sec. 9245, R.C.M. 1935; R.C.M. 1947, 93-4206(part); amd. Sec. 5, Ch. 399, L. 1979; Sec. 27-19-305, MCA 1979; redes. 27-19-314 by Code Commissioner, 1979.**

**Cross-References**

Family law — protective orders, Title 40, ch. 15, part 2.

**27-19-315. When restraining order may be granted without notice.** (1) Except as provided in subsection (2), a temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if:

(a) the applicant or the applicant's attorney makes a showing that the requirements of 27-19-201(1) are met; and

(b) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give notice and the reasons supporting the applicant's claim that notice should not be required.

(2) If the state, the state's departments, agencies, or political subdivisions, or officers of the state or a political subdivision acting in their official capacities are the adverse party, a temporary restraining order may not be granted unless:

(a) notice could not be provided through no fault of the moving party; or

(b) the suit is brought pursuant to Title 40.

(3) As used in this section, "political subdivision" has the meaning provided in 2-9-101.

**History: En. Sec. 7, Ch. 399, L. 1979; amd. Sec. 2, Ch. 526, L. 1985; amd. Sec. 714, Ch. 56, L. 2009; amd. Sec. 3, Ch. 43, L. 2023; amd. Sec. 1, Ch. 285, L. 2023.**

**Cross-References**

Montana Administrative Procedure Act — judicial review — order of stay without notice, 2-4-702.

Violation of order of protection — penalty, 45-5-626.

**27-19-316. Contents and filing of restraining order granted without notice.** Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why the injury is irreparable and why the order was granted without notice;

(4) except as provided in 40-4-121 or Title 40, chapter 15, expire after 10 days and is not enforceable after 10 days unless extended under 27-19-317.

**History:** **En. Sec. 9, Ch. 399, L. 1979; amd. Sec. 3, Ch. 526, L. 1985; amd. Sec. 4, Ch. 350, L. 1995; amd. Sec. 1, Ch. 78, L. 2023.**

**27-19-317. Extension of expiration date.** The time fixed in the order for its expiration may be extended, for good cause shown, for 10 days or, if the party against whom the order is directed consents, for a longer period. The reasons for the extension must be entered in the record.

**History:** **En. Sec. 10, Ch. 399, L. 1979; amd. Sec. 2, Ch. 78, L. 2023.**

**27-19-318. Application for injunction to be heard without delay.** (1) Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character.

(2) At the hearing the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if the party does not do so, the court or judge shall dissolve the temporary restraining order.

(3) The hearing must be held within 20 days of issuance of the temporary restraining order.

(4) If the hearing is not held within 20 days, the temporary restraining order automatically expires unless:

(a) the parties stipulate in writing to an extension; and

(b) the stipulation is filed with the court.

(5) After the hearing, the court may extend the temporary restraining order for 21 days.

(6) If the judge fails to address whether a bond is required during the hearing, the temporary restraining order is invalid and unenforceable.

(7) If the court has not ruled on the preliminary injunction within 21 days of the hearing on the temporary restraining order, the preliminary injunction is considered denied unless otherwise stipulated in writing by the parties.

**History:** **En. Sec. 11, Ch. 399, L. 1979; amd. Sec. 715, Ch. 56, L. 2009; amd. Sec. 3, Ch. 78, L. 2023.**

**27-19-319. Motion to dissolve or modify restraining order.** On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice as the court or judge may prescribe, the adverse party may appear and move that the order be dissolved or modified. The court shall hear and determine such motion as expeditiously as the ends of justice require.

**History:** **En. Sec. 12, Ch. 399, L. 1979.**

**27-19-320. Secure construction site — provide for safety.** If the court grants a preliminary injunction or restraining order and the party against whom the injunction or restraining order is asserted is performing construction work, remodeling or renovating a property, or constructing a structure, building, or improvement, the court shall:

(1) allow the party who is enjoined or restrained to protect the property from damage; and

(2) provide for the safety of the property and any construction work on the property.

**History:** **En. Sec. 1, Ch. 80, L. 2023.**

## Part 4
## Dissolution or Modification of Preliminary Injunction

**27-19-401. Application to dissolve or modify injunction.** The party enjoined may apply to the judge who granted the injunction order or to the court in which the action is brought to dissolve or modify the same. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad.

**History:** **En. Sec. 89, p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; R.C.M. 1947, 93-4211(part); amd. Sec. 14, Ch. 399, L. 1979.**

**27-19-402. Repealed.** Sec. 18, Ch. 399, L. 1979.

**History: Ap. p. Sec. 877, C. Civ. Proc. 1895; re-en. Sec. 6649, Rev. C. 1907; re-en. Sec. 9249, R.C.M. 1921; re-en. Sec. 9249, R.C.M. 1935; Sec. 93-4210, R.C.M. 1947; Ap. p. Sec. 89, p. 59, Bannack Stat.; re-en. Sec. 118, p. 155, L. 1867; re-en. Sec. 135, p. 53, Cod. Stat. 1871; re-en. Sec. 177, p. 81, L. 1877; re-en. Sec. 177, 1st Div. Rev. Stat. 1879; re-en. Sec. 179, 1st Div. Comp. Stat. 1887; amd. Sec. 878, C. Civ. Proc. 1895; re-en. Sec. 6650, Rev. C. 1907; re-en. Sec. 9250, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 532; re-en. Sec. 9250, R.C.M. 1935; Sec. 93-4211, R.C.M. 1947; R.C.M. 1947, 93-4210(part), 93-4211(part); amd. Sec. 49, Ch. 12, L. 1979.**

**27-19-403. New undertaking for security following hearing.** Upon the hearing, the judge may require a new undertaking, in the same or a different sum, to be given by the party who obtained the order, with similar sureties and to the same effect as the undertaking executed upon the granting of the original order. The persons executing the new undertaking become liable as if they had executed the surety upon the granting of the original order. The persons who executed the original undertaking remain liable only until the new undertaking is given and approved. A new undertaking must comply with the provisions of 27-19-306.

**History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 50, Ch. 12, L. 1979; amd. Sec. 15, Ch. 399, L. 1979; amd. Sec. 3, Ch. 575, L. 1995.**

**27-19-404. When injunction dissolved or modified.** If upon the hearing it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

**History: Ap. p. Sec. 90, p. 60, Bannack Stat.; re-en. Sec. 119, p. 155, L. 1867; re-en. Sec. 136, p. 53, Cod. Stat. 1871; re-en. Sec. 178, p. 81, L. 1877; re-en. Sec. 178, 1st Div. Rev. Stat. 1879; re-en. Sec. 180, 1st Div. Comp. Stat. 1887; re-en. Sec. 879, C. Civ. Proc. 1895; re-en. Sec. 6651, Rev. C. 1907; re-en. Sec. 9251, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 533; re-en. Sec. 9251, R.C.M. 1935; Sec. 93-4212, R.C.M. 1947; Ap. p. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part), 93-4212; amd. Sec. 51, Ch. 12, L. 1979.**

**27-19-405. Enjoined party's undertaking for security upon dissolution.** If the injunction order is dissolved because the alleged injury is not irreparable and is capable of being adequately compensated for in money, the court or judge shall require the enjoined party to execute an undertaking in such form and amount and with such sureties as the court or judge may direct, conditioned to indemnify the party who obtained the injunction order against loss sustained by reason of the dissolution.

**History: En. Sec. 876, C. Civ. Proc. 1895; re-en. Sec. 6648, Rev. C. 1907; re-en. Sec. 9248, R.C.M. 1921; re-en. Sec. 9248, R.C.M. 1935; R.C.M. 1947, 93-4209(part); amd. Sec. 52, Ch. 12, L. 1979; amd. Sec. 16, Ch. 399, L. 1979.**

**27-19-406. Costs upon dissolution.** Where an injunction order is granted and the same is afterward dissolved upon application of the party enjoined thereby, the court or judge to whom the application to dissolve is made may award as costs of the application, against the party who obtained the injunction and in favor of the party applying, such sum as to the court or judge may appear just, not less than $10 or more than $100.

**History: En. Sec. 880, C. Civ. Proc. 1895; re-en. Sec. 6652, Rev. C. 1907; re-en. Sec. 9252, R.C.M. 1921; re-en. Sec. 9252, R.C.M. 1935; R.C.M. 1947, 93-4213; amd. Sec. 17, Ch. 399, L. 1979.**

**Cross-References**

When costs allowed, of course, to plaintiff, 25-10-101.

# CHAPTER 20
# RECEIVERS

### Part 1 — General Provisions

27-20-101. Definition of property.
27-20-102. When and by whom receiver appointed.
27-20-103. Appointment of receiver upon dissolution of corporation.

### Part 2 — Appointment Procedure

27-20-201. Notice of application for appointment before judgment.
27-20-202. Interested persons not to be appointed without consent.
27-20-203. Security to cover damages caused by appointment upon ex parte application.

**Part 3 — Action by Receivers — Removal**
27-20-301. Oath and undertaking to faithfully discharge duties.
27-20-302. Powers of receiver.
27-20-303. Investment of funds.
27-20-304. Removal of receiver.

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**Chapter Cross-References**
Proceedings in aid of execution — appointment of receiver, Title 25, ch. 14, part 2.

## Part 1
## General Provisions

**27-20-101. Definition of property.** The word "property", used in this chapter, includes the rents, profits, or other income and the increase of real or personal property.

**History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part).**

**27-20-102. When and by whom receiver appointed.** A receiver may be appointed by the court in which an action is pending when the action is:

(1) by a vendor to vacate a fraudulent purchase of property;

(2) by a creditor to subject any property or fund to the creditor's claim;

(3) between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund or the proceeds of the property or fund is probable and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(4) by a mortgagee for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property and when it is shown that the mortgaged property is in danger of being lost, removed, or materially injured or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt;

(5) after judgment, to carry the judgment into effect;

(6) after judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal; or

(7) for proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.

**History: En. Sec. 116, p. 67, Bannack Stat.; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, Cod. Stat. 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 564; re-en. Sec. 9301, R.C.M. 1935; amd. Sec. 142, Ch. 300, L. 1967; R.C.M. 1947, 93-4401; amd. Sec. 50, Ch. 2, L. 2009; amd. Sec. 716, Ch. 56, L. 2009.**

**Cross-References**
Proceedings in foreclosure suits, 71-1-222.

**27-20-103. Appointment of receiver upon dissolution of corporation.** Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, to collect the debts and property due and belonging to the corporation, to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

**History: En. Sec. 222, p. 94, L. 1877; re-en. Sec. 222, 1st Div. Rev. Stat. 1879; re-en. Sec. 230, 1st Div. Comp. Stat. 1887; re-en. Sec. 952, C. Civ. Proc. 1895; re-en. Sec. 6700, Rev. C. 1907; re-en. Sec. 9303, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 565; re-en. Sec. 9303, R.C.M. 1935; R.C.M. 1947, 93-4403.**

## Part 2
## Appointment Procedure

**27-20-201. Notice of application for appointment before judgment.** Notice of an application for the appointment of a receiver in an action before judgment in the action must be given to the adverse party unless the party has failed to appear in the action and the time limited for the party's appearance has expired or unless it appears to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court or lost, materially injured, destroyed, or unlawfully disposed of.

**History: En. Sec. 951, C. Civ. Proc. 1895; re-en. Sec. 6699, Rev. C. 1907; re-en. Sec. 9302, R.C.M. 1921; re-en. Sec. 9302, R.C.M. 1935; R.C.M. 1947, 93-4402(part); amd. Sec. 717, Ch. 56, L. 2009.**

**27-20-202. Interested persons not to be appointed without consent.** No party, attorney, or person interested in an action can be appointed receiver therein without the written consent of the parties, filed with the clerk.

**History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701, Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part).**

**27-20-203. Security to cover damages caused by appointment upon ex parte application.** If a receiver is appointed upon an ex parte application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant may sustain by reason of the appointment of the receiver and the entry by the receiver upon the receiver's duties, if the applicant procured the appointment wrongfully, maliciously, or without sufficient cause. The court may, at any time after the appointment, require an additional undertaking.

**History: En. Sec. 223, p. 94, L. 1877; re-en. Sec. 223, 1st Div. Rev. Stat. 1879; re-en. Sec. 231, 1st Div. Comp. Stat. 1887; re-en. Sec. 953, C. Civ. Proc. 1895; re-en. Sec. 6701, Rev. C. 1907; re-en. Sec. 9304, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 566; re-en. Sec. 9304, R.C.M. 1935; R.C.M. 1947, 93-4404(part); amd. Sec. 718, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

## Part 3
## Action by Receivers — Removal

**27-20-301. Oath and undertaking to faithfully discharge duties.** Before beginning the duties as receiver, the receiver must be sworn to perform the duties faithfully and shall execute an undertaking, with one or more sureties approved by the court or judge, to the person and in an amount that the court or judge may direct, to the effect that the receiver will faithfully discharge the duties of receiver in the action and obey the orders of the court in the action. The court may at any time direct the receiver to give new bonds with new sureties with the same effect.

**History: En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part); amd. Sec. 53, Ch. 12, L. 1979; amd. Sec. 719, Ch. 56, L. 2009.**

**Cross-References**

Appointment of receiver — oath and undertaking, 25-14-203.

**27-20-302. Powers of receiver.** The receiver has, under the control of the court, the power to:

(1) bring and defend actions in the receiver's own name, as receiver;
(2) take and keep possession of the property;
(3) receive rents, collect debts, and compound for and compromise the rents and debts;
(4) make transfers; and
(5) generally do acts respecting the property that the court may authorize.

**History: En. Sec. 225, p. 94, L. 1877; re-en. Sec. 225, 1st Div. Rev. Stat. 1879; re-en. Sec. 233, 1st Div. Comp. Stat. 1887; re-en. Sec. 955, C. Civ. Proc. 1895; re-en. Sec. 6703, Rev. C. 1907; re-en. Sec. 9306, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 568; re-en. Sec. 9306, R.C.M. 1935; R.C.M. 1947, 93-4406; amd. Sec. 720, Ch. 56, L. 2009.**

**Cross-References**

Unfair trade practices — powers of receiver, 30-14-132.

**27-20-303. Investment of funds.** Funds in the hands of a receiver may be invested upon interest, by order of the court, but no such order can be made except upon the consent of all the parties to the action.

**History:** **En. Sec. 226, p. 94, L. 1877; re-en. Sec. 226, 1st Div. Rev. Stat. 1879; re-en. Sec. 234, 1st Div. Comp. Stat. 1887; re-en. Sec. 956, C. Civ. Proc. 1895; re-en. Sec. 6704, Rev. C. 1907; re-en. Sec. 9307, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 569; re-en. Sec. 9307, R.C.M. 1935; R.C.M. 1947, 93-4407.**

**27-20-304. Removal of receiver.** The court may at any time remove a receiver.
**History:** **En. Sec. 224, p. 94, L. 1877; re-en. Sec. 224, 1st Div. Rev. Stat. 1879; re-en. Sec. 232, 1st Div. Comp. Stat. 1887; re-en. Sec. 954, C. Civ. Proc. 1895; re-en. Sec. 6702, Rev. C. 1907; re-en. Sec. 9305, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 567; re-en. Sec. 9305, R.C.M. 1935; R.C.M. 1947, 93-4405(part).**

## CHAPTERS 21 THROUGH 24
## RESERVED

## CHAPTER 25
## CERTIORARI — WRIT OF REVIEW

### Part 1 — General Provisions

27-25-101. Name of writ.
27-25-102. When and by whom granted.
27-25-103. Application of rules of procedure.

### Part 2 — Procedure for Obtaining and Serving Writ

27-25-201. Application for writ — notice.
27-25-202. Contents of writ.
27-25-203. Stay of proceedings.
27-25-204. Service of writ.
27-25-205. To whom writ directed — return.

### Part 3 — Procedure Upon Return of Writ

27-25-301. Time for return and hearing.
27-25-302. Correction of defective return.
27-25-303. Scope of review upon writ.
27-25-304. Hearing and judgment.
27-25-305. Copy of judgment to inferior tribunal or officer.

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## Part 1
## General Provisions

**27-25-101. Name of writ.** The writ of certiorari may be denominated the writ of review.
**History:** **En. Sec. 371, p. 121, Bannack Stat.; re-en. Sec. 430, p. 222, L. 1867; re-en. Sec. 506, p. 139, Cod. Stat. 1871; re-en. Sec. 536, p. 179, L. 1877; re-en. Sec. 536, 1st Div. Rev. Stat. 1879; re-en. Sec. 554, 1st Div. Comp. Stat. 1887; re-en. Sec. 1940, C. Civ. Proc. 1895; re-en. Sec. 7202, Rev. C. 1907; re-en. Sec. 9836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1067; re-en. Sec. 9836, R.C.M. 1935; R.C.M. 1947, 93-9001.**

**27-25-102. When and by whom granted.** A writ of review may be granted by:

(1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or

(2) the supreme court or the district court or any judge of those courts, when a lower tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of the tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.

**History:** **En. Sec. 372, p. 121, Bannack Stat.; re-en. Sec. 431, p. 222, L. 1867; re-en. Sec. 507, p. 139, Cod. Stat. 1871; re-en. Sec. 537, p. 180, L. 1877; re-en. Sec. 537, 1st Div. Rev. Stat. 1879; re-en. Sec. 555, 1st Div. Comp. Stat. 1887; re-en. Sec. 1941, C. Civ. Proc. 1895; re-en. as amd. Sec. 7203, Rev. C. 1907; re-en. Sec. 9837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1068; re-en. Sec. 9837, R.C.M. 1935; R.C.M. 1947, 93-9002; amd. Sec. 48, Ch. 10, L. 1993.**

**Cross-References**

Contempts — judgment and orders final, 3-1-523.
Supreme Court — powers of justices individually — certiorari, 3-2-212.
Original jurisdiction — District Court, 3-5-302.
Powers of judges at chambers, 3-5-311.

**27-25-103. Application of rules of procedure.** Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

**History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 54, Ch. 12, L. 1979.**

**Cross-References**

New trial, Title 25, ch. 11.

Appeal to Supreme Court, Title 25, ch. 12.

## Part 2
## Procedure for Obtaining and Serving Writ

**27-25-201. Application for writ — notice.** The application must be made on affidavit by the party beneficially interested; and the court may require a notice of the application to be given to the adverse party, grant an order to show cause why it should not be allowed, or grant the writ without notice.

**History: En. Sec. 373, p. 121, Bannack Stat.; re-en. Sec. 432, p. 222, L. 1867; re-en. Sec. 508, p. 139, Cod. Stat. 1871; re-en. Sec. 538, p. 180, L. 1877; re-en. Sec. 538, 1st Div. Rev. Stat. 1879; re-en. Sec. 556, 1st Div. Comp. Stat. 1887; re-en. Sec. 1942, C. Civ. Proc. 1895; re-en. Sec. 7204, Rev. C. 1907; re-en. Sec. 9838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1069; re-en. Sec. 9838, R.C.M. 1935; R.C.M. 1947, 93-9003.**

**Cross-References**

Affidavits, Title 26, ch. 1, part 10.

**27-25-202. Contents of writ.** The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and require the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

**History: En. Sec. 375, p. 121, Bannack Stat.; re-en. Sec. 434, p. 222, L. 1867; re-en. Sec. 510, p. 139, Cod. Stat. 1871; re-en. Sec. 540, p. 180, L. 1877; re-en. Sec. 540, 1st Div. Rev. Stat. 1879; re-en. Sec. 558, 1st Div. Comp. Stat. 1887; re-en. Sec. 1944, C. Civ. Proc. 1895; re-en. Sec. 7206, Rev. C. 1907; re-en. Sec. 9840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1071; re-en. Sec. 9840, R.C.M. 1935; R.C.M. 1947, 93-9005.**

**27-25-203. Stay of proceedings.** If a stay of proceedings is not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge. However, if the words are omitted, the power of the lower tribunal, board, or officer is not suspended and the proceedings are not stayed.

**History: En. Sec. 376, p. 122, Bannack Stat.; re-en. Sec. 435, p. 223, L. 1867; re-en. Sec. 511, p. 140, Cod. Stat. 1871; re-en. Sec. 541, p. 180, L. 1877; re-en. Sec. 541, 1st Div. Rev. Stat. 1879; re-en. Sec. 559, 1st Div. Comp. Stat. 1887; re-en. Sec. 1945, C. Civ. Proc. 1895; re-en. Sec. 7207, Rev. C. 1907; re-en. Sec. 9841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1072; re-en. Sec. 9841, R.C.M. 1935; R.C.M. 1947, 93-9006; amd. Sec. 132, Ch. 575, L. 1981; amd. Sec. 49, Ch. 10, L. 1993.**

**27-25-204. Service of writ.** The writ must be served in the manner as a summons in civil action, except when otherwise expressly directed by the court or judge.

**History: En. Sec. 377, p. 122, Bannack Stat.; re-en. Sec. 436, p. 223, L. 1867; re-en. Sec. 512, p. 140, Cod. Stat. 1871; re-en. Sec. 542, p. 180, L. 1877; re-en. Sec. 542, 1st Div. Rev. Stat. 1879; re-en. Sec. 560, 1st Div. Comp. Stat. 1887; re-en. Sec. 1946, C. Civ. Proc. 1895; re-en. Sec. 7208, Rev. C. 1907; re-en. Sec. 9842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1073; re-en. Sec. 9842, R.C.M. 1935; R.C.M. 1947, 93-9007.**

**27-25-205. To whom writ directed — return.** The writ may be directed to the inferior tribunal, board, or officer or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

**History: En. Sec. 374, p. 121, Bannack Stat.; re-en. Sec. 433, p. 222, L. 1867; re-en. Sec. 509, p. 139, Cod. Stat. 1871; re-en. Sec. 539, p. 180, L. 1877; re-en. Sec. 539, 1st Div. Rev. Stat. 1879; re-en. Sec. 557, 1st Div. Comp. Stat. 1887; re-en. Sec. 1943, C. Civ. Proc. 1895; re-en. Sec. 7205, Rev. C. 1907; re-en. Sec. 9839, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1070; re-en. Sec. 9839, R.C.M. 1935; R.C.M. 1947, 93-9004.**

## Part 3
## Procedure Upon Return of Writ

**27-25-301. Time for return and hearing.** Writs of review issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

**History: En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).**

**27-25-302. Correction of defective return.** If the return of the writ be defective, the court or judge may order a further return to be made.

**History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879; re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).**

**27-25-303. Scope of review upon writ.** The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

**History: En. Sec. 378, p. 122, Bannack Stat.; re-en. Sec. 437, p. 223, L. 1867; re-en. Sec. 513, p. 140, Cod. Stat. 1871; re-en. Sec. 543, p. 181, L. 1877; re-en. Sec. 543, 1st Div. Rev. Stat. 1879; re-en. Sec. 561, 1st Div. Comp. Stat. 1887; re-en. Sec. 1947, C. Civ. Proc. 1895; re-en. Sec. 7209, Rev. C. 1907; re-en. Sec. 9843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1074; re-en. Sec. 9843, R.C.M. 1935; R.C.M. 1947, 93-9008.**

**27-25-304. Hearing and judgment.** When a full return has been made, the court or judge must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, annulling, or modifying the proceedings below.

**History: En. Sec. 379, p. 122, Bannack Stat.; re-en. Sec. 438, p. 223, L. 1867; re-en. Sec. 514, p. 140, Cod. Stat. 1871; re-en. Sec. 544, p. 181, L. 1877; re-en. Sec. 544, 1st Div. Rev. Stat. 1879; re-en. Sec. 562, 1st Div. Comp. Stat. 1887; re-en. Sec. 1948, C. Civ. Proc. 1895; re-en. Sec. 7210, Rev. C. 1907; re-en. Sec. 9844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1075; re-en. Sec. 9844, R.C.M. 1935; R.C.M. 1947, 93-9009(part).**

**Cross-References**

Judgment, Title 25, ch. 9.

**27-25-305. Copy of judgment to inferior tribunal or officer.** A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified upon.

**History: En. Sec. 380, p. 122, Bannack Stat.; re-en. Sec. 439, p. 223, L. 1867; re-en. Sec. 515, p. 140, Cod. Stat. 1871; re-en. Sec. 545, p. 181, L. 1877; re-en. Sec. 545, 1st Div. Rev. Stat. 1879; re-en. Sec. 563, 1st Div. Comp. Stat. 1887; re-en. Sec. 1949, C. Civ. Proc. 1895; re-en. Sec. 7211, Rev. C. 1907; re-en. Sec. 9845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1076; re-en. Sec. 9845, R.C.M. 1935; R.C.M. 1947, 93-9010.**

# CHAPTER 26
# MANDAMUS — WRIT OF MANDATE

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Part 4 — Judgment

27-26-401. Default not permitted.
27-26-402. Judgment for applicant.
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## Part 1
## General Provisions

**27-26-101. Name of writ.** The writ of mandamus may be denominated a writ of mandate.

**History: En. Sec. 382, p. 122, Bannack Stat.; re-en. Sec. 441, p. 224, L. 1867; re-en. Sec. 517, p. 141, Cod. Stat. 1871; re-en. Sec. 547, p. 181, L. 1877; re-en. Sec. 547, 1st Div. Rev. Stat. 1879; re-en. Sec. 565, 1st Div. Comp. Stat. 1887; re-en. Sec. 1960, C. Civ. Proc. 1895; re-en. Sec. 7213, Rev. C. 1907; re-en. Sec. 9847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1084; re-en. Sec. 9847, R.C.M. 1935; R.C.M. 1947, 93-9101.**

**27-26-102. When and by whom issued.** (1) A writ of mandamus may be issued by the supreme court or the district court or any judge of the district court to any lower tribunal, corporation, board, or person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(2) The writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law.

**History: (1)En. Sec. 383, p. 122, Bannack Stat.; amd. Sec. 442, p. 224, L. 1867; re-en. Sec. 518, p. 141, Cod. Stat. 1871; re-en. Sec. 548, p. 181, L. 1877; re-en. Sec. 548, 1st Div. Rev. Stat. 1879; re-en. Sec. 566, 1st Div. Comp. Stat. 1887; amd. Sec. 1961, C. Civ. Proc. 1895; re-en. Sec. 7214, Rev. C. 1907; re-en. Sec. 9848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1085; re-en. Sec. 9848, R.C.M. 1935; Sec. 93-9102, R.C.M. 1947; (2)En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc. 1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; Sec. 93-9103, R.C.M. 1947; R.C.M. 1947, 93-9102, 93-9103(part); amd. Sec. 50, Ch. 10, L. 1993.**

**Cross-References**

Supreme Court — original jurisdiction, 3-2-202.
District Court original jurisdiction, 3-5-302.
District Court — powers of judges at chambers, 3-5-311.
Mandamus to compel enforcement of metal mine reclamation law, 82-4-354.

**27-26-103. Application of rules of procedure.** Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

**History: Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-3902, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9302(part), 93-9303(part); amd. Sec. 55, Ch. 12, L. 1979.**

**Cross-References**

New trial, Title 25, ch. 11.
Appeal to Supreme Court, Title 25, ch. 12.

## Part 2
## Procedure for Obtaining, Serving, and Enforcing Writ

**27-26-201. Application for writ.** The writ must be issued upon affidavit, on the application of the party beneficially interested.

**History: En. Sec. 384, p. 123, Bannack Stat.; re-en. Sec. 443, p. 224, L. 1867; re-en. Sec. 519, p. 141, Cod. Stat. 1871; re-en. Sec. 549, p. 181, L. 1877; re-en. Sec. 549, 1st Div. Rev. Stat. 1879; re-en. Sec. 567, 1st Div. Comp. Stat. 1887; amd. Sec. 1962, C. Civ. Proc. 1895; re-en. Sec. 7215, Rev. C. 1907; re-en. Sec. 9849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1086; re-en. Sec. 9849, R.C.M. 1935; R.C.M. 1947, 93-9103(part).**

**Cross-References**

Affidavits, Title 26, ch. 1, part 10.

**27-26-202. Notice of application.** The notice of the application, when given, must be at least 10 days or a shorter time, in the discretion of the court or judge.

**History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).**

**27-26-203. Form and content of writ.** The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command the party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court, at a specified time and place, why the party has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why the party has not done as commanded must be omitted and a return day inserted.

**History: En. Sec. 385, p. 123, Bannack Stat.; re-en. Sec. 444, p. 224, L. 1867; re-en. Sec. 520, p. 141, Cod. Stat. 1871; re-en. Sec. 550, p. 181, L. 1877; re-en. Sec. 550, 1st Div. Rev. Stat. 1879; re-en. Sec. 568, 1st Div. Comp. Stat. 1887; amd. Sec. 1963, C. Civ. Proc. 1895; re-en. Sec. 7216, Rev. C. 1907; re-en. Sec. 9850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1087; re-en. Sec. 9850, R.C.M. 1935; R.C.M. 1947, 93-9104; amd. Sec. 721, Ch. 56, L. 2009.**

**27-26-204. Factors that determine whether writ peremptory or alternative.** When an application to the court or judge is made without notice to the adverse party and the writ be allowed, the alternative must be first issued; but if the application be upon due notice and the writ be allowed, the peremptory may be issued in the first instance.

**History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).**

**27-26-205. Service of writ.** The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court or judge. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

**History: En. Sec. 394, p. 124, Bannack Stat.; re-en. Sec. 453, p. 225, L. 1867; re-en. Sec. 529, p. 143, Cod. Stat. 1871; en. Sec. 559, p. 183, L. 1877; re-en. Sec. 559, 1st Div. Rev. Stat. 1879; re-en. Sec. 577, 1st Div. Comp. Stat. 1887; re-en. Sec. 1972, C. Civ. Proc. 1895; re-en. Sec. 7225, Rev. C. 1907; re-en. Sec. 9859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1096; re-en. Sec. 9859, R.C.M. 1935; R.C.M. 1947, 93-9113.**

**27-26-206. Enforcement of writ — penalty.** (1) When a peremptory mandate has been issued and directed to any lower tribunal, corporation, board, or person, if it appears to the court or judge that any member of the tribunal, corporation, board, or person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

(2) When a party is an elected or appointed official and is found in contempt pursuant to 3-1-501 for not complying with a writ of mandamus, the official may be subject to recall pursuant to the provisions of Title 2, chapter 16, part 6.

**History: En. Sec. 395, p. 124, Bannack Stat.; re-en. Sec. 454, p. 225, L. 1867; re-en. Sec. 530, p. 143, Cod. Stat. 1871; re-en. Sec. 560, p. 183, L. 1877; re-en. Sec. 560, 1st Div. Rev. Stat. 1879; re-en. Sec. 578, 1st Div. Comp. Stat. 1887; amd. Sec. 1973, C. Civ. Proc. 1895; re-en. Sec. 7226, Rev. C. 1907; re-en. Sec. 9860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1097; re-en. Sec. 9860, R.C.M. 1935; R.C.M. 1947, 93-9114; amd. Sec. 51, Ch. 10, L. 1993; amd. Sec. 2, Ch. 101, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 101, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Effect of Criminal code — no limitation on civil remedy, 45-1-104.

## Part 3
## Procedure Upon Return of Writ

**27-26-301. Time for return and hearing.** Writs of mandate issued by the supreme court or by a district court or district judge may, in the discretion of the court issuing the writ, be made returnable and a hearing thereon be heard at any time.

**History:** En. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; R.C.M. 1947, 93-9301(part).

**27-26-302. Answer of adverse party.** On the return of the alternative or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

**History:** En. Sec. 387, p. 123, Bannack Stat.; re-en. Sec. 446, p. 224, L. 1867; re-en. Sec. 522, p. 142, Cod. Stat. 1871; re-en. Sec. 552, p. 182, L. 1877; re-en. Sec. 552, 1st Div. Rev. Stat. 1879; re-en. Sec. 570, 1st Div. Comp. Stat. 1887; amd. Sec. 1965, C. Civ. Proc. 1895; re-en. Sec. 7218, Rev. C. 1907; re-en. Sec. 9852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1089; re-en. Sec. 9852, R.C.M. 1935; R.C.M. 1947, 93-9106.

**27-26-303. Jury trial.** (1) If an answer is made that raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court or judge may order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages that the applicant may have sustained if the jury finds for the applicant.

(2) If the proceeding is in the district court or before a district judge, the trial must take place as in other cases. If a jury is required in the supreme court, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the box in the custody of the clerk of the supreme court for that purpose. The conduct of the trial must be the same as in the district court, and the clerk of the supreme court has the same authority to issue process and enter orders and judgments as the district court clerk has in similar cases.

**History:** En. Sec. 388, p. 123, Bannack Stat.; re-en. Sec. 447, p. 224, L. 1867; re-en. Sec. 523, p. 142, Cod. Stat. 1871; re-en. Sec. 553, p. 182, L. 1877; re-en. Sec. 553, 1st Div. Rev. Stat. 1879; re-en. Sec. 571, 1st Div. Comp. Stat. 1887; en. Sec. 1966, C. Civ. Proc. 1895; re-en. Sec. 7219, Rev. C. 1907; re-en. Sec. 9853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1090; re-en. Sec. 9853, R.C.M. 1935; R.C.M. 1947, 93-9107; amd. Sec. 56, Ch. 12, L. 1979; amd. Sec. 722, Ch. 56, L. 2009.

**27-26-304. Applicant's response to answer.** On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

**History:** En. Sec. 389, p. 123, Bannack Stat.; re-en. Sec. 448, p. 224, L. 1867; re-en. Sec. 524, p. 142, Cod. Stat. 1871; re-en. Sec. 554, p. 183, L. 1877; re-en. Sec. 554, 1st Div. Rev. Stat. 1879; re-en. Sec. 572, 1st Div. Comp. Stat. 1887; re-en. Sec. 1967, C. Civ. Proc. 1895; re-en. Sec. 7220, Rev. C. 1907; re-en. Sec. 9854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1091; re-en. Sec. 9854, R.C.M. 1935; R.C.M. 1947, 93-9108.

**Cross-References**

Trials, Title 25, ch. 7.

**27-26-305. Motion for new trial.** The motion for a new trial must be made in the court in which the issue of fact is tried.

**History:** En. Sec. 555, p. 183, L. 1877; re-en. Sec. 555, 1st Div. Rev. Stat. 1879; re-en. Sec. 573, 1st Div. Comp. Stat. 1887; re-en. Sec. 1968, C. Civ. Proc. 1895; re-en. Sec. 7221, Rev. C. 1907; re-en. Sec. 9855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1092; re-en. Sec. 9855, R.C.M. 1935; R.C.M. 1947, 93-9109.

**Cross-References**

New trial, Title 25, ch. 11.

**27-26-306. Argument to proceed if no new trial.** If no notice of a motion for a new trial be given or, if given, the motion be denied, the argument must proceed at any time the court or judge may direct.

**History:** En. Sec. 1969, C. Civ. Proc. 1895; re-en. Sec. 7222, Rev. C. 1907; re-en. Sec. 9856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1093; re-en. Sec. 9856, R.C.M. 1935; R.C.M. 1947, 93-9110.

**27-26-307. Procedure when there is no answer or no material issue of fact.** If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the court or judge must proceed to hear or fix a day for hearing the argument of the case.

**History: En. Sec. 392, p. 124, Bannack Stat.; re-en. Sec. 451, p. 225, L. 1867; re-en. Sec. 527, p. 143, Cod. Stat. 1871; amd. Sec. 557, p. 183, L. 1877; re-en. Sec. 557, 1st Div. Rev. Stat. 1879; re-en. Sec. 575, 1st Div. Comp. Stat. 1887; re-en. Sec. 1970, C. Civ. Proc. 1895; re-en. Sec. 7223, Rev. C. 1907; re-en. Sec. 9857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1094; re-en. Sec. 9857, R.C.M. 1935; R.C.M. 1947, 93-9111.**

## Part 4
## Judgment

**27-26-401. Default not permitted.** The writ cannot be granted by default. The case must be heard by the court or judge, whether the adverse party appear or not.

**History: En. Sec. 386, p. 123, Bannack Stat.; re-en. Sec. 445, p. 224, L. 1867; re-en. Sec. 521, p. 142, Cod. Stat. 1871; re-en. Sec. 551, p. 182, L. 1877; re-en. Sec. 551, 1st Div. Rev. Stat. 1879; re-en. Sec. 569, 1st Div. Comp. Stat. 1887; amd. Sec. 1964, C. Civ. Proc. 1895; re-en. Sec. 7217, Rev. C. 1907; re-en. Sec. 9851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1088; re-en. Sec. 9851, R.C.M. 1935; R.C.M. 1947, 93-9105(part).**

**27-26-402. Judgment for applicant.** If judgment is given for the applicant:

(1) the applicant may recover the damages that the applicant has sustained, as found by the jury or as determined by the court or referees, if a reference was ordered, together with costs;

(2) an execution may issue for the damages and costs; and

(3) a peremptory mandate must be awarded without delay.

**History: En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part); amd. Sec. 57, Ch. 12, L. 1979; amd. Sec. 723, Ch. 56, L. 2009.**

**27-26-403. Officers not to be personally liable.** In all cases where the respondent is a state, county, or municipal officer, all damages and costs, or either, which may be recovered or awarded shall be recovered and awarded against the state, county, or municipal corporation represented by such officer and not against such officer so appearing in said proceeding. The same shall be a proper claim against the state or county or municipal corporation for which such officer shall have appeared and shall be paid as other claims against the state, county, or municipality are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in such proceeding in good faith.

**History: En. Sec. 393, p. 124, Bannack Stat.; re-en. Sec. 452, p. 225, L. 1867; re-en. Sec. 528, p. 143, Cod. Stat. 1871; re-en. Sec. 558, p. 183, L. 1877; re-en. Sec. 558, 1st Div. Rev. Stat. 1879; re-en. Sec. 576, 1st Div. Comp. Stat. 1887; re-en. Sec. 1971, C. Civ. Proc. 1895; re-en. Sec. 7224, Rev. C. 1907; re-en. Sec. 9858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1095; amd. Sec. 1, Ch. 5, L. 1925; re-en. Sec. 9858, R.C.M. 1935; R.C.M. 1947, 93-9112(part).**

**Cross-References**

Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees, 2-9-305.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

Public officers not to be personally taxed, 25-10-701.

# CHAPTER 27
# WRIT OF PROHIBITION

### Part 1 — General Provisions

27-27-101. Definition and function of writ of prohibition.
27-27-102. Issuance of writ.
27-27-103. Form and content of writ.
27-27-104. Application of procedure governing mandamus.

## Part 1
## General Provisions

**27-27-101. Definition and function of writ of prohibition.** The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

**History: En. Sec. 561, p. 184, L. 1877; re-en. Sec. 561, 1st Div. Rev. Stat. 1879; re-en. Sec. 579, 1st Div. Comp. Stat. 1887; amd. Sec. 1980, C. Civ. Proc. 1895; re-en. Sec. 7227, Rev. C. 1907; re-en. Sec. 9861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1102; re-en. Sec. 9861, R.C.M. 1935; R.C.M. 1947, 93-9201; amd. Sec. 14, Ch. 3, L. 1985.**

**27-27-102. Issuance of writ.** A writ of prohibition may be issued by the supreme court or the district court or any district judge to any lower tribunal or to a corporation, board, or person in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law. The writ is issued upon an affidavit on the application of the person beneficially interested.

**History: En. Sec. 562, p. 184, L. 1877; re-en. Sec. 562, 1st Div. Rev. Stat. 1879; re-en. Sec. 580, 1st Div. Comp. Stat. 1887; amd. Sec. 1981, C. Civ. Proc. 1895; re-en. Sec. 7228, Rev. C. 1907; re-en. Sec. 9862, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1103; re-en. Sec. 9862, R.C.M. 1935; R.C.M. 1947, 93-9202; amd. Sec. 52, Ch. 10, L. 1993.**

**Cross-References**

Supreme Court — original jurisdiction, 3-2-202.
District Court — original jurisdiction, 3-5-302.
District Court — powers of judges at chambers, 3-5-311.
Affidavits, Title 26, ch. 1, part 10.

**27-27-103. Form and content of writ.** The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command the party to desist or refrain from further proceedings in the action or matter specified in the writ until the further order of the court or judge from which it is issued and to show cause before the court or judge, at a specified time and place, why the party should not be absolutely restrained from any further proceedings in the action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why the party should not be absolutely restrained, etc., must be omitted and a return day inserted.

**History: En. Sec. 563, p. 184, L. 1877; re-en. Sec. 563, 1st Div. Rev. Stat. 1879; re-en. Sec. 581, 1st Div. Comp. Stat. 1887; re-en. Sec. 1982, C. Civ. Proc. 1895; re-en. Sec. 7229, Rev. C. 1907; re-en. Sec. 9863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1104; re-en. Sec. 9863, R.C.M. 1935; R.C.M. 1947, 93-9203; amd. Sec. 724, Ch. 56, L. 2009.**

**27-27-104. Application of procedure governing mandamus.** The provisions of chapter 26, except 27-26-101, 27-26-102, 27-26-201, and 27-26-203, apply to this proceeding.

**History: Ap. p. Sec. 564, p. 184, L. 1877; re-en. Sec. 564, 1st Div. Rev. Stat. 1879; re-en. Sec. 582, 1st Div. Comp. Stat. 1887; re-en. Sec. 1983, C. Civ. Proc. 1895; re-en. Sec. 7230, Rev. C. 1907; re-en. Sec. 9864, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1105; re-en. Sec. 9864, R.C.M. 1935; Sec. 93-9204, R.C.M. 1947; Ap. p. Sec. 565, p. 185, L. 1877; re-en. Sec. 565, 1st Div. Rev. Stat. 1879; re-en. Sec. 583, 1st Div. Comp. Stat. 1887; amd. Sec. 1990, C. Civ. Proc. 1895; re-en. Sec. 7231, Rev. C. 1907; re-en. Sec. 9865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1108; re-en. Sec. 9865, R.C.M. 1935; Sec. 93-9301, R.C.M. 1947; Ap. p. Sec. 2000, C. Civ. Proc. 1895; re-en. Sec. 7232, Rev. C. 1907; re-en. Sec. 9866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1109; re-en. Sec. 9866, R.C.M. 1935; Sec. 93-9302, R.C.M. 1947; Ap. p. Sec. 2001, C. Civ. Proc. 1895; re-en. Sec. 7233, Rev. C. 1907; re-en. Sec. 9867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1110; re-en. Sec. 9867, R.C.M. 1935; Sec. 93-9303, R.C.M. 1947; R.C.M. 1947, 93-9204, 93-9301(part), 93-9302(part), 93-9303(part).**

# CHAPTER 28
# QUO WARRANTO

### Part 1 — General Provisions

27-28-101. When proceeding may be instituted for unlawful assertion of authority.
27-28-102. When proceeding may be brought against a corporation for misconduct.
27-28-103. When attorney general required to commence action.
27-28-104. Upon whose relation action brought — security for costs.
27-28-105. Jurisdiction and venue.
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**Part 2 — Procedure in General**
27-28-201. Leave to file complaint.
27-28-202. Summons — complaint filed without leave.
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**Part 3 — Actions by Private Persons for Usurpation of Office**
27-28-301. When action may be commenced — undertaking for security.
27-28-302. Contents of complaint.
27-28-303. Who may be made defendants.
27-28-304. Whose rights determined in judgment.
27-28-305. No stay of judgment of ouster pending appeal.
27-28-306. Rights of prevailing party to take office and demand books and papers.
27-28-307. Refusal to turn over books and papers punishable as contempt.
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**Part 4 — Actions to Oust Irregularly Elected Corporate Directors**
27-28-401. When judgment of ouster rendered.
27-28-402. Court order to hold new election.

**Part 5 — Actions Against Corporations**
27-28-501. Judgment forbidding continuation of offending acts.
27-28-502. Judgment dissolving corporation.
27-28-503. Costs — judgment against corporation or alleged corporation.
27-28-504. Court appointed trustees to settle affairs of dissolved corporation.
27-28-505. Powers and duties of trustees — liability.
27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt — liability.

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## Part 1
## General Provisions

**27-28-101. When proceeding may be instituted for unlawful assertion of authority.** A civil action may be brought in the name of the state against:

(1) a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise within this state or an office in a corporation created by the authority of this state;

(2) a public officer, civil or military, who does or suffers an act that, by the provisions of law, works a forfeiture of office;

(3) an association of persons who act as a corporation within this state without being legally incorporated.

**History: En. Sec. 1410, C. Civ. Proc. 1895; re-en. Sec. 6943, Rev. C. 1907; re-en. Sec. 9576, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9576, R.C.M. 1935; R.C.M. 1947, 93-6401; amd. Sec. 725, Ch. 56, L. 2009.**

**27-28-102. When proceeding may be brought against a corporation for misconduct.** A like action may be brought against a corporation when it has:

(1) offended against a provision of an act for its creation or renewal or any act altering or amending such acts;

(2) forfeited its privileges and franchises by nonuser;

(3) committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;

(4) misused a franchise or privilege conferred upon it by law or exercised a franchise or privilege not so conferred.

**History: En. Sec. 1411, C. Civ. Proc. 1895; re-en. Sec. 6944, Rev. C. 1907; re-en. Sec. 9577, R.C.M. 1921; re-en. Sec. 9577, R.C.M. 1935; R.C.M. 1947, 93-6402.**

**27-28-103. When attorney general required to commence action.** The attorney general shall commence an action:

(1) when directed by the governor; and

(2) when, upon complaint or otherwise, the attorney general has good reason to believe that any case specified in 27-28-102 can be established by proof.

**History:** En. Sec. 1412, C. Civ. Proc. 1895; re-en. Sec. 6945, Rev. C. 1907; re-en. Sec. 9578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 803; re-en. Sec. 9578, R.C.M. 1935; R.C.M. 1947, 93-6403; amd. Sec. 726, Ch. 56, L. 2009.

**27-28-104. Upon whose relation action brought — security for costs.** The officer may, upon the officer's own relation, bring any action, or the officer may, on leave of the court or a judge in vacation, bring the action upon the relation of another person. If the action is brought under 27-28-101(1), security for costs may be required, to be given as in other cases.

**History:** En. Sec. 1413, C. Civ. Proc. 1895; re-en. Sec. 6946, Rev. C. 1907; re-en. Sec. 9579, R.C.M. 1921; re-en. Sec. 9579, R.C.M. 1935; R.C.M. 1947, 93-6404; amd. Sec. 727, Ch. 56, L. 2009.

**Cross-References**

Security for costs, Title 25, ch. 10, part 6.

**27-28-105. Jurisdiction and venue.** An action under this chapter can be brought in the supreme court of the state or in the district court of the county in which the defendant or one of the defendants resides or is found or, when the defendant is a corporation, in the county in which it is situated or has a place of business.

**History:** En. Sec. 1417, C. Civ. Proc. 1895; re-en. Sec. 6950, Rev. C. 1907; re-en. Sec. 9583, R.C.M. 1921; re-en. Sec. 9583, R.C.M. 1935; R.C.M. 1947, 93-6408.

**27-28-106. Precedence on court calendar.** Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern, shall, on the motion of the attorney general or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

**History:** En. Sec. 1433, C. Civ. Proc. 1895; re-en. Sec. 6966, Rev. C. 1907; re-en. Sec. 9599, R.C.M. 1921; re-en. Sec. 9599, R.C.M. 1935; R.C.M. 1947, 93-6424.

## Part 2
## Procedure in General

**27-28-201. Leave to file complaint.** Upon application for leave to file a complaint, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the minutes of the court or the fact shall be endorsed by the judge on the complaint, which shall then be filed.

**History:** En. Sec. 1418, C. Civ. Proc. 1895; re-en. Sec. 6951, Rev. C. 1907; re-en. Sec. 9584, R.C.M. 1921; re-en. Sec. 9584, R.C.M. 1935; R.C.M. 1947, 93-6409.

**27-28-202. Summons — complaint filed without leave.** When the complaint is filed without leave and notice, a summons shall issue and be served as in other cases.

**History:** En. Sec. 1419, C. Civ. Proc. 1895; re-en. Sec. 6952, Rev. C. 1907; re-en. Sec. 9585, R.C.M. 1921; re-en. Sec. 9585, R.C.M. 1935; R.C.M. 1947, 93-6410.

**27-28-203. Service by publication.** When a summons is returned not served because the defendant or its officers or office cannot be found within the county, the clerk shall publish the summons as in other cases.

**History:** En. Sec. 1420, C. Civ. Proc. 1895; re-en. Sec. 6953, Rev. C. 1907; re-en. Sec. 9586, R.C.M. 1921; re-en. Sec. 9586, R.C.M. 1935; R.C.M. 1947, 93-6411.

**27-28-204. Pleadings.** The pleadings shall be as in other cases.

**History:** En. Sec. 1421, C. Civ. Proc. 1895; re-en. Sec. 6954, Rev. C. 1907; re-en. Sec. 9587, R.C.M. 1921; re-en. Sec. 9587, R.C.M. 1935; R.C.M. 1947, 93-6412.

**Cross-References**

Pleadings in general, Title 25, ch. 4, part 2.

**27-28-205. Judgment — unlawful assertion of authority.** When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment must be rendered that the defendant be ousted and altogether excluded from the office, franchise, or privilege and that the relator recover costs.

**History:** En. Sec. 1422, C. Civ. Proc. 1895; re-en. Sec. 6955, Rev. C. 1907; re-en. Sec. 9588, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 809; re-en. Sec. 9588, R.C.M. 1935; R.C.M. 1947, 93-6413; amd. Sec. 728, Ch. 56, L. 2009.

**Cross-References**

Imposition of costs, Title 25, ch. 10, part 1.

**27-28-206. Right to appeal.** If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases.

**History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).**

**Cross-References**

Appeal to Supreme Court, Title 25, ch. 12.

**27-28-207. Procedure when action brought in supreme court.** Actions under this chapter commenced in the supreme court must be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court has the same authority to issue summonses and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial must be the same as in the district court. If a jury is required to determine an issue of fact, a jury must be drawn and selected from the jury box of Lewis and Clark County and the clerk of the district court of that county shall place the jury box in the custody of the clerk of the supreme court for that purpose.

**History: En. Sec. 1434, C. Civ. Proc. 1895; re-en. Sec. 6967, Rev. C. 1907; re-en. Sec. 9600, R.C.M. 1921; re-en. Sec. 9600, R.C.M. 1935; R.C.M. 1947, 93-6425; amd. Sec. 58, Ch. 12, L. 1979.**

## Part 3
## Actions by Private Persons for Usurpation of Office

**27-28-301. When action may be commenced — undertaking for security.** A person claiming to be entitled to a public office unlawfully held and exercised by another, individually or by an attorney, may bring an action for the office in the name of the state, as provided in this chapter. On filing the complaint, the person shall enter into an undertaking, with two sufficient sureties to be approved by the judge or any judge of the court in which the action is brought, conditioned that the person will pay any judgment for costs or damages recovered against the person and all costs and expenses incurred in the prosecution of the action. The undertaking must be filed with the clerk of the court.

**History: En. Sec. 1414, C. Civ. Proc. 1895; re-en. Sec. 6947, Rev. C. 1907; re-en. Sec. 9580, R.C.M. 1921; re-en. Sec. 9580, R.C.M, 1935; R.C.M. 1947, 93-6405; amd. Sec. 729, Ch. 56, L. 2009.**

**27-28-302. Contents of complaint.** When the action is against a person for usurping an office, the complaint must set forth the name of the person who claims to be entitled to the office, with a statement of the person's right to the office.

**History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part); amd. Sec. 730, Ch. 56, L. 2009.**

**27-28-303. Who may be made defendants.** All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

**History: En. Sec. 1416, C. Civ. Proc. 1895; re-en. Sec. 6949, Rev. C. 1907; re-en. Sec. 9582, R.C.M. 1921; re-en. Sec. 9582, R.C.M. 1935; R.C.M. 1947, 93-6407.**

**27-28-304. Whose rights determined in judgment.** Judgment may be rendered upon the right of the defendant and also upon the right of the person averred to be entitled, as provided in 27-28-302, or only upon the right of the defendant, as justice requires.

**History: En. Sec. 1415, C. Civ. Proc. 1895; re-en. Sec. 6948, Rev. C. 1907; re-en. Sec. 9581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 805; re-en. Sec. 9581, R.C.M. 1935; R.C.M. 1947, 93-6406(part).**

**27-28-305. No stay of judgment of ouster pending appeal.** If there is judgment of ouster against the defendant, there shall be no stay of execution or proceedings pending such appeal.

**History: En. Sec. 1435, C. Civ. Proc. 1895; re-en. Sec. 6968, Rev. C. 1907; re-en. Sec. 9601, R.C.M. 1921; re-en. Sec. 9601, R.C.M. 1935; R.C.M. 1947, 93-6426(part).**

**27-28-306. Rights of prevailing party to take office and demand books and papers.** If judgment is rendered in favor of the person alleged to be entitled to an office, the person may, after taking the oath of office and executing any official bond required by law, take upon the person the execution of the office and the person shall immediately upon taking the office demand of the defendant all the books and papers in the defendant's custody or within the defendant's power pertaining to the office from which the defendant has been ousted.

**History:** **En. Sec. 1425, C. Civ. Proc. 1895; re-en. Sec. 6958, Rev. C. 1907; re-en. Sec. 9591, R.C.M. 1921; re-en. Sec. 9591, R.C.M. 1935; R.C.M. 1947, 93-6416; amd. Sec. 731, Ch. 56, L. 2009.**

**27-28-307. Refusal to turn over books and papers punishable as contempt.** If the defendant refuses or neglects to deliver any book or paper pursuant to the demand in 27-28-306, the defendant is considered guilty of a contempt of court and shall be fined an amount not exceeding $10,000 and imprisoned in the jail of the county until the defendant complies with the order of the court or is otherwise discharged by due course of law.

**History:** **En. Sec. 1427, C. Civ. Proc. 1895; re-en. Sec. 6960, Rev. C. 1907; re-en. Sec. 9593, R.C.M. 1921; re-en. Sec. 9593, R.C.M. 1935; R.C.M. 1947, 93-6418; amd. Sec. 732, Ch. 56, L. 2009.**

**Cross-References**

Contempts, Title 3, ch. 1, part 5.

**27-28-308. Subsequent action for damages for usurpation.** The person in whose favor judgment is rendered under this part may, at any time within 1 year after the date of the judgment, bring an action against the party ousted and recover the damages sustained by reason of the usurpation.

**History:** **En. Sec. 1426, C. Civ. Proc. 1895; re-en. Sec. 6959, Rev. C. 1907; re-en. Sec. 9592, R.C.M. 1921; re-en. Sec. 9592, R.C.M. 1935; R.C.M. 1947, 93-6417; amd. Sec. 733, Ch. 56, L. 2009.**

## Part 4
## Actions to Oust Irregularly Elected Corporate Directors

**Part Cross-References**

Nonprofit corporations — directors and officers, Title 35, ch. 2, part 4.

**27-28-401. When judgment of ouster rendered.** When the action is against a director of a corporation and the court finds that at the director's election either illegal votes were received or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted and of induction in favor of the person who was entitled to be declared elected at the election.

**History:** **En. Sec. 1423, C. Civ. Proc. 1895; re-en. Sec. 6956, Rev. C. 1907; re-en. Sec. 9589, R.C.M. 1921; re-en. Sec. 9589, R.C.M. 1935; R.C.M. 1947, 93-6414; amd. Sec. 734, Ch. 56, L. 2009.**

**27-28-402. Court order to hold new election.** In a case named in 27-28-401, the court may order a new election to be held, at a time and place and by judges appointed by the court, notice of which election and naming the judges shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation. The order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office, and the court may enforce its order by attachment or in any other manner it deems necessary.

**History:** **En. Sec. 1424, C. Civ. Proc. 1895; re-en. Sec. 6957, Rev. C. 1907; re-en. Sec. 9590, R.C.M. 1921; re-en. Sec. 9590, R.C.M. 1935; R.C.M. 1947, 93-6415.**

## Part 5
## Actions Against Corporations

**Part Cross-References**

Corporations, Partnerships, and Associations, Title 35.

**27-28-501. Judgment forbidding continuation of offending acts.** When it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense or the exercise of such power.

**History:** **En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

**27-28-502. Judgment dissolving corporation.** When in any such action it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises or has not used the same during a term of 5 years, judgment shall be entered that it be ousted and excluded therefrom and that it be dissolved.

**History: En. Sec. 1428, C. Civ. Proc. 1895; re-en. Sec. 6961, Rev. C. 1907; re-en. Sec. 9594, R.C.M. 1921; re-en. Sec. 9594, R.C.M. 1935; R.C.M. 1947, 93-6419(part).**

**27-28-503. Costs — judgment against corporation or alleged corporation.** If judgment be rendered against a corporation or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation or against the person claiming to be a corporation.

**History: En. Sec. 1432, C. Civ. Proc. 1895; re-en. Sec. 6965, Rev. C. 1907; re-en. Sec. 9598, R.C.M. 1921; re-en. Sec. 9598, R.C.M. 1935; R.C.M. 1947, 93-6423.**

**Cross-References**

Costs, Title 25, ch. 10.
Imposition of costs, Title 25, ch. 10, part 1.

**27-28-504. Court appointed trustees to settle affairs of dissolved corporation.** The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking payable to the state, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

**History: En. Sec. 1429, C. Civ. Proc. 1895; re-en. Sec. 6962, Rev. C. 1907; re-en. Sec. 9595, R.C.M. 1921; re-en. Sec. 9595, R.C.M. 1935; R.C.M. 1947, 93-6420.**

**27-28-505. Powers and duties of trustees — liability.** (1) The trustees shall immediately demand all money, property, and papers within the custody or control of the officers of the corporation belonging to the corporation or in any way necessary for the settlement of its affairs or for the discharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation.

(2) The trustees are jointly and severally liable to the creditors and stockholders of the corporation to the extent of its property and effects which come into their hands.

**History: En. Sec. 1430, C. Civ. Proc. 1895; re-en. Sec. 6963, Rev. C. 1907; re-en. Sec. 9596, R.C.M. 1921; re-en. Sec. 9596, R.C.M. 1935; R.C.M. 1947, 93-6421; amd. Sec. 59, Ch. 12, L. 1979.**

**27-28-506. Refusal to deliver assets or papers to trustees — punishment for contempt — liability.** An officer of the corporation who refuses or neglects to deliver over any money or other things pursuant to the demand is considered guilty of a contempt of court and shall be fined an amount not exceeding $10,000 and imprisoned in the jail of the proper county until the officer complies with the order of the court or is otherwise discharged by due course of law. The officer is liable to the trustees for the value of all money or other things refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of the neglect or refusal.

**History: En. Sec. 1431, C. Civ. Proc. 1895; re-en. Sec. 6964, Rev. C. 1907; re-en. Sec. 9597, R.C.M. 1921; re-en. Sec. 9597, R.C.M. 1935; R.C.M. 1947, 93-6422; amd. Sec. 735, Ch. 56, L. 2009.**

# CHAPTER 29
# RESERVED

# CHAPTER 30
# NUISANCES

## Part 1 — General Provisions

27-30-101. Definition of public nuisance.
27-30-102. Repealed.
27-30-103. Repealed.

27-30-104. Repealed.
27-30-105. Repealed.
27-30-106. Definition of private nuisance.
27-30-107. Preemption.

Part 2 — Public Nuisances

27-30-201. Repealed.
27-30-202. Repealed.
27-30-203. Repealed.
27-30-204. Abatement of public nuisance by government entity or officer or injured party.
27-30-205. Liability for public nuisance.
27-30-206. Public nuisance actions by government.
27-30-207. Private cause of action for public nuisance.

Part 3 — Private Nuisances

27-30-301. Repealed.
27-30-302. Repealed.
27-30-303. Action for private nuisance.
27-30-304. Liability for private nuisance.
27-30-305. Remedies for private nuisances.
27-30-306. Emergency abatement of private nuisance by injured party.

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## Part 1
## General Provisions

**27-30-101. Definition of public nuisance.** (1) A public nuisance is:

(a) a condition arising out of the use of real property that unlawfully interferes with a public right by endangering communal safety, being indecent to the community, or being offensive to the community; or

(b) a condition that unlawfully interferes with the public right to free passage or use, in the customary manner, of a navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway.

(2) The following nonexclusive list of actions or conditions may not be considered a public nuisance or be the basis for a public nuisance cause of action:

(a) an action or condition that is lawful;

(b) an action or condition that is authorized, approved, licensed, or mandated by statute, ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a government entity. This includes conditions or actions that are subject to an order, notice, or decree issued under 75-10-711 or 75-10-712.

(c) noises resulting from the shooting activities at a shooting range during established hours of operation;

(d) impairment of the spiritual, cultural, or emotional significance associated with a navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway;

(e) the design, manufacturing, distributing, selling, labeling, or marketing of a product;

(f) the aggregation of individual injuries or private rights, including private nuisances; or

(g) the design, manufacturing, distributing, selling, labeling, or marketing of firearms, firearm accessories, or ammunition, as defined in 30-20-301, or components of firearms, firearm accessories, or ammunition.

(3) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(4) As used in this chapter, the term "unlawfully interferes" includes but is not limited to actions or conditions that violate a statute, ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a government entity. This includes any statute, ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a government entity either before or after October 1, 2025.

**History: (1)En. Sec. 4550, Civ. C. 1895; re-en. Sec. 6162, Rev. C. 1907; re-en. Sec. 8642, R.C.M. 1921; Cal. Civ. C. Sec. 3479; re-en. Sec. 8642, R.C.M 1935; Sec. 57-101, R.C.M. 1947; (2)En. Sec. 4553, Civ. C. 1895; re-en. Sec. 6165, Rev. C. 1907; re-en. Sec. 8645, R.C.M. 1921; Cal. Civ. C. Sec. 3482; Field Civ. C. Sec. 1952; re-en. Sec. 8645, R.C.M. 1935; Sec. 57-104, R.C.M. 1947; R.C.M. 1947, 57-101, 57-104; (3)En. Sec. 1, Ch. 123, L. 1981; amd. Sec. 1, Ch. 299, L. 2011; amd. Sec. 1, Ch. 531, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 531, L. 2025. Amendment effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**Cross-References**

Criminal code — public nuisance, 45-8-111.
Criminal code — action to abate — public nuisance, 45-8-112.
Interference with canal or ditch easements, 70-17-112.
Public ways, 85-1-111.
Navigable waters, 85-1-112.

**27-30-102. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: (1)En. Sec. 4551, Civ. C. 1895; re-en. Sec. 6163, Rev. C. 1907; re-en. Sec. 8643, R.C.M. 1921; Cal. Civ. C. Sec. 3480; Based on Field Civ. C. Sec. 1950; re-en. Sec. 8643, R.C.M. 1935; Sec. 57-102, R.C.M. 1947; (2) En. Sec. 4552, Civ. C. 1895; re-en. Sec. 6164, Rev. C. 1907; re-en. Sec. 8644, R.C.M. 1921; Cal. Civ. C. Sec. 3481; Field Civ. C. Sec. 1951; re-en. Sec. 8644, R.C.M. 1935; Sec. 57-103, R.C.M. 1947; R.C.M. 1947, 57-102, 57-103.**

**Cross-References**

Criminal code — public nuisance, 45-8-111.

**27-30-103. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 228, p. 91, Bannack Stat.; amd. Sec. 249, p. 187, L. 1867; re-en. Sec. 298, p. 93, Cod. Stat. 1871; re-en. Sec. 349, p. 137, L. 1877; re-en. Sec. 349, 1st Div. Rev. Stat. 1879; re-en. Sec. 361, 1st Div. Comp. Stat. 1887; re-en. Sec. 1300, C. Civ. Proc. 1895; re-en Sec. 6865, Rev. C. 1907; re-en. Sec. 9474, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 731; re-en. Sec. 9474, R.C.M. 1935; R.C.M. 1947, 93-6101(part).**

**27-30-104. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 4555, Civ. C. 1895; re-en. Sec. 6167, Rev. C. 1907; re-en. Sec. 8647, R.C.M. 1921; Cal. Civ. C. Sec. 3484; Field Civ. C. Sec. 1954; re-en. Sec. 8647, R.C.M. 1935; R.C.M. 1947, 57-106.**

**27-30-105. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 4554, Civ. C. 1895; re-en. Sec. 6166, Rev. C. 1907; re-en. Sec. 8646, R.C.M. 1921; Cal. Civ. C. Sec. 3483; Field Civ. C. Sec. 1953; re-en. Sec. 8646, R.C.M. 1935; R.C.M. 1947, 57-105.**

**27-30-106. Definition of private nuisance.** (1) A private nuisance is a condition arising out of the use of real property that:

(a) is injurious to health or safety, indecent or offensive to the senses of an individual on an adjacent or neighboring property, or

(b) obstructs the free use of an adjacent of neighboring property so as to interfere with the comfortable enjoyment of life or property.

(2) The following may not be considered a private nuisance or be the basis for a private nuisance cause of action:

(a) an action or condition that is authorized, approved, licensed, or mandated by statute, ordinance, regulation, permit, license, order, rule, or other similar measure issued, adopted, promulgated, or approved by a government entity. This includes conditions or actions that are subject to an order, notice, or decree issued under 75-10-711 or 75-10-712; or

(b) noises resulting from the shooting activities on a shooting range during established hours of operation.

(3) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a private nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

**History: En. Sec. 2, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-107. Preemption.** This chapter abrogates the common law of public nuisance and private nuisance in this state to the extent common law is inconsistent with this chapter.

**History: En. Sec. 3, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

## Part 2
## Public Nuisances

**27-30-201. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 4570, Civ. C. 1895; re-en. Sec. 6168, Rev. C. 1907; re-en. Sec. 8648, R.C.M. 1921; Cal. Civ. C. Sec. 3490; Field Civ. C. Sec. 1955; re-en. Sec. 8648, R.C.M. 1935; R.C.M. 1947, 57-107.**

**27-30-202. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: (1)En. Sec. 4571, Civ. C. 1895; re-en. Sec. 6169, Rev. C. 1907; re-en. Sec. 8649, R.C.M. 1921; Cal. Civ. C. Sec. 3491; Based on Field Civ. C. Sec. 1956; re-en. Sec. 8649, R.C.M. 1935; Sec. 57-108, R.C.M. 1947; (2) En. Sec. 4572, Civ. C. 1895; re-en. Sec. 6170, Rev. C. 1907; re-en. Sec. 8650, R.C.M. 1921; Cal. Civ. C. Sec. 3492; re-en. Sec. 8650, R.C.M. 1935; Sec. 57-109, R.C.M. 1947; R.C.M. 1947, 57-108, 57-109.**

**27-30-203. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 4573, Civ. C. 1895; re-en. Sec. 6171, Rev. C. 1907; re-en. Sec. 8651, R.C.M. 1921; Cal. Civ. C. Sec. 3493; Field Civ. C. Sec. 1958; re-en. Sec. 8651, R.C.M. 1935; R.C.M. 1947, 57-110; amd. Sec. 736, Ch. 56, L. 2009.**

**27-30-204. Abatement of public nuisance by government entity or officer or injured party.** A public nuisance may be abated by a government entity or officer authorized by law. A person may abate a public nuisance that is specially injurious to that person by removing or, if necessary, destroying the thing that constitutes the nuisance, as long as doing so would not constitute a breach of the peace or cause unnecessary injury. Nothing in this section alters the remedies to a government entity or private person in a public nuisance cause of action.

**History: Ap. p. Sec. 4574, Civ. C. 1895; re-en. Sec. 6172, Rev. C. 1907; re-en. Sec. 8652, R.C.M. 1921; Cal. Civ. C. Sec. 3494; Field Civ. C. Sec. 1959; re-en. Sec. 8652, R.C.M. 1935; Sec. 57-111, R.C.M. 1947; Ap. p. Sec. 4575, Civ. C. 1895; re-en. Sec. 6173, Rev. C. 1907; re-en. Sec. 8653, R.C.M. 1921; Cal. Civ. C. Sec. 3495; Field Civ. C. Sec. 1960; re-en. Sec. 8653, R.C.M. 1935; Sec. 57-112, R.C.M. 1947; R.C.M. 1947, 57-111, 57-112; amd. Sec. 737, Ch. 56, L. 2009; amd. Sec. 7, Ch. 531, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 7, Ch. 531, L. 2025. Amendment effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**Cross-References**

City or Town Council — control of nuisances, 7-5-4104.
Noxious weeds — common nuisance, 7-22-2115.
Public building or facility — public health inspections, 50-1-203.
Local boards of health — power to abate nuisances, 50-2-116.
Structure creating fire hazard — public nuisance, 50-62-102.
Fallen wire fencing declared nuisance, 81-4-105.
Male equine animals running at large as nuisance, 81-4-205.
Abandoned horses on public range — public nuisance — condemnation, 81-4-502.

**27-30-205. Liability for public nuisance.** (1) A person may be subject to a public nuisance cause of action only if that person proximately caused the public nuisance at the time the public nuisance was created, which includes controlling, or instructing another person to engage in, the activity that proximately caused the public nuisance.

(2) Every successive owner of property who neglects to abate a continuing public nuisance upon or in the use of the property that was created by a former owner is liable for the public nuisance in the same manner as the one who first created it.

(3) No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

**History: En. Sec. 4, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-206. Public nuisance actions by government.** (1) A public nuisance cause of action is available to a government entity only if the public nuisance is within the jurisdiction of that government entity. Past, current, or future expenditures made by a government entity related to injunction of or any other response to a public nuisance does not itself confer standing to file or maintain a public nuisance action.

(2) In a public nuisance action brought by a government entity, the only remedies against a public nuisance are:

(a) indictment or information as regulated by Titles 45 and 46;

(b) injunctive relief to enjoin an unlawful activity that is proximately causing a public nuisance; and

(c) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably necessary to abate the public nuisance based on relevant and reliable cost factors and established by clear and convincing evidence. All resources provided under this subsection (2) must be spent to abate the public nuisance itself.

(3) Remedies available under this section may not include:

(a) the costs of abating a potential future public nuisance; or

(b) damages of any kind, including economic, noneconomic, and exemplary damages.

(4) For the purposes of this chapter, the term "government entity" means the state, an agency or a political subdivision of the state, a federal entity or agency, or any other governing authority, including a tribal government.

(5) Nothing in this chapter limits the authority of a government entity to order any person to vacate the right-of-way of a public highway of this state classified within the commission-designated highway system or as a state highway, as provided in 60-1-201, or any navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway.

**History: En. Sec. 5, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-207. Private cause of action for public nuisance.** (1) A public nuisance cause of action is available to a private person only if that person has sustained a special injury proximately caused by the public nuisance and only if the person can show the existence of the special injury by clear and convincing evidence.

(2) A special injury is an injury that is different in kind, not just in degree, from an injury sustained by the general public exercising the same public right. A special injury is not one

based upon impairment of the spiritual, cultural, or emotional significance associated with a navigable lake, river, bay, stream, canal, or basin or a public park, square, street, road, or highway.

(3) Financial expenditures made by a private person related to an injunction of, or any other response to, a public nuisance does not constitute a special injury sufficient to confer standing on the person to file or maintain a public nuisance action.

(4) The remedy available to a private person in a public nuisance action is limited solely to compensatory damages for the special injury.

(5) The abatement of a public nuisance pursuant to 27-30-204 does not preclude the right of a person to recover compensatory damages under this section.

(6) Private persons may not bring a class action for special injuries arising out of a public nuisance.

**History: En. Sec. 6, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

## Part 3
## Private Nuisances

**27-30-301. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: En. Sec. 4590, Civ. C. 1895; re-en. Sec. 6174, Rev. C. 1907; re-en. Sec. 8654, R.C.M. 1921; Cal. Civ. C. Sec. 3501; Field Civ. C. Sec. 1961; re-en. Sec. 8654, R.C.M. 1935; R.C.M. 1947, 57-113.**

**27-30-302. Repealed.** Sec. 12, Ch. 531, L. 2025.

**History: Ap. p. Sec. 4591, Civ. C. 1895; re-en. Sec. 6175, Rev. C. 1907; re-en. Sec. 8655, R.C.M. 1921; Cal. Civ. C. Sec. 3502; Field Civ. C. Sec. 1962; re-en. Sec. 8655, R.C.M. 1935; Sec. 57-114, R.C.M. 1947; Ap. p. Sec. 4592, Civ. C. 1895; re-en. Sec. 6176, Rev. C. 1907; re-en. Sec. 8656, R.C.M. 1921; Cal. Civ. C. Sec. 3503; Field Civ. C. Sec. 1963; re-en. Sec. 8656, R.C.M. 1935; Sec. 57-115, R.C.M. 1947; R.C.M. 1947, 57-114, 57-115; amd. Sec. 738, Ch. 56, L. 2009.**

**27-30-303. Action for private nuisance.** An action for private nuisance may be brought by a person whose property is injuriously affected or whose personal enjoyment of property is lessened by the private nuisance.

**History: En. Sec. 8, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-304. Liability for private nuisance.** (1) A person may be subject to a private nuisance cause of action only if that person, or the person's agent, proximately caused the private nuisance or, if that person is not available for a private nuisance lawsuit or cannot satisfy a private nuisance judgment, the person who owns or controls the real property where the private nuisance exists.

(2) Every successive owner or controller of real property who neglects to abate a continuing private nuisance upon or in the use of the property that was created under previous ownership is liable for the private nuisance in the same manner as the one who owned or controlled the real property when the private nuisance was created.

**History: En. Sec. 9, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-305. Remedies for private nuisances.** The remedies against a private nuisance are:

(1) injunctive relief to enjoin an activity proximately causing the private nuisance;

(2) monetary and nonmonetary resources, if quantifiable, that a court determines are reasonably necessary to abate the private nuisance based on relevant and reliable cost factors and established by clear and convincing evidence. All resources provided under this subsection must be spent to abate the private nuisance itself.

(3) damages proximately caused by the private nuisance.

**History: En. Sec. 10, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

**27-30-306. Emergency abatement of private nuisance by injured party.** A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing that constitutes the private nuisance so long as doing so would not constitute committing a breach of the peace or cause unnecessary injury. When a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon the wrongdoer's land, reasonable notice must be given to the wrongdoer before entering to abate the private nuisance. Nothing in this section alters the remedies available in a private nuisance cause of action.

**History: En. Sec. 11, Ch. 531, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

*Applicability — Nonapplicability:* Section 14, Ch. 531, L. 2025, provided: "(1) [This act] applies to a cause of action that accrues on or after October 1, 2025. A cause of action that accrued prior to October 1, 2025, is governed by the law applicable immediately before October 1, 2025, and that law is continued in effect for that purpose;

(2) Nothing in [this act] applies to an action filed by the Montana department of justice within 4 years from October 1, 2025, relating to the design, manufacturing, distributing, selling, labeling, or marketing of opioids. With the consent of the attorney general, other government entities may join an action filed by the Montana department of justice."

# CHAPTER 31
# CHANGE OF NAME

### Part 1 — General Provisions

27-31-101. Petition for change of name of natural person.
27-31-102. Petition for change of name of nonprofit corporation.
27-31-103. District court jurisdiction.

### Part 2 — Procedure

27-31-201. Order setting hearing date — notice — safety.
27-31-202. Filing of objections to change.
27-31-203. Conduct of hearing.
27-31-204. Court order.
27-31-205. Repealed.

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**Chapter Cross-References**

Decree of dissolution or legal separation — restoration of maiden name, 40-4-108.

Vital statistics, Title 50, ch. 15.

## Part 1
## General Provisions

**27-31-101. Petition for change of name of natural person.** All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition signed by the person and, if the person is under 18 years of age, by one of the person's parents, if living, or if both are dead, then by the person's guardian, and if there is no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of the person, the person's present name, the name proposed, and the reason for the change of name and must, if neither parent of the person is living, name as far as known to the petitioner the near relatives of the person and their place of residence.

**History:** **En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part); amd. Sec. 739, Ch. 56, L. 2009.**

**27-31-102. Petition for change of name of nonprofit corporation.** Any religious, benevolent, literary, or scientific corporation or any corporation bearing or using or being known by the name of any benevolent or charitable order or society may by petition apply to the district court of the county in which its articles of incorporation were originally filed or in which its property is situated for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation and must specify the date of the formation of the corporation, the name proposed, and the reason for the change of name. Upon the filing of the petition, the same procedure shall be followed as upon applications for changes of names of natural persons.

**History:** **En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R.C.M. 1921; re-en. Sec. 9964, R.C.M. 1935; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973; amd. Sec. 59, Ch. 535, L. 1975; R.C.M. 1947, 93-100-2(part); amd. Sec. 60, Ch. 12, L. 1979.**

**Cross-References**

Nonprofit corporation — corporate name, 35-2-305.

**27-31-103. District court jurisdiction.** Applications for change of names must be heard and determined by the district court.

**History:** **En. Sec. 2260, C. Civ. Proc. 1895; re-en. Sec. 7360, Rev. C. 1907; re-en. Sec. 9963, R.C.M. 1921; re-en. Sec. 9963, R.C.M. 1935; R.C.M. 1947, 93-100-1.**

## Part 2
## Procedure

**27-31-201. Order setting hearing date — notice — safety.** (1) When a petition setting out the matters contained in 27-31-101 or 27-31-102 is filed, the court or judge may appoint a time for hearing the petition. Except as provided in subsections (2) and (3), notice of the time and place of hearing the petition must be published for 4 successive weeks in some newspaper published in the county, if a newspaper is printed in the county. If a newspaper is not printed in the county, a copy of the notice must be posted in at least three public places in the county for 4 successive weeks.

(2) Publication is not required for a change of name of a minor under 27-31-101 if both parents and all legal guardians consent in writing.

(3) The court may allow a petition to proceed on a sealed-record basis when probable cause is shown that the safety of the petitioner is at risk and the judge is satisfied that the petitioner is not attempting to avoid debt or to hide a criminal record. The request to proceed on a sealed-record basis must be set forth in the petition. All papers and records pertaining to the sealed-record petition must be kept as a permanent record of the court and withheld from inspection unless the judge denies the request to proceed on a sealed-record basis. Except as provided in subsections (4) and (5), a person, other than the petitioner, may not have access to the records except for good cause shown and on order of the judge of the court in which the petition was granted.

(4) When a petitioner is committed to or under the supervision of the department of corrections or is incarcerated in a state prison as defined in 53-30-101, the petitioner shall

serve the petition on the department. A court shall provide reasonable opportunity for the department to appear and provide a response to the petition. The department shall make all reasonable efforts to contact a victim as defined in 46-18-243 to obtain information relevant to the department's response to the petition.

(5) If the court grants a petition filed by a person committed to or under the supervision of the department of corrections or incarcerated in a state prison as defined in 53-30-101, the court shall authorize the department of corrections and the department of justice to maintain and disseminate the petitioner's records in a manner that ensures performance of duties required by offender registration statutes, testing and collection of biological samples, victim notification, or other disclosures or notices required by law.

**History: En. Sec. 2262, C. Civ. Proc. 1895; re-en. Sec. 7362, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1911; re-en. Sec. 9965, R.C.M. 1921; re-en. Sec. 9965, R.C.M. 1935; R.C.M. 1947, 93-100-3; amd. Sec. 1, Ch. 233, L. 1987; amd. Sec. 1, Ch. 169, L. 1997; amd. Sec. 1, Ch. 278, L. 2021; amd. Sec. 1, Ch. 354, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 354, L. 2025. Amendment effective October 1, 2025.

**27-31-202. Filing of objections to change.** At any time before such hearing, objections may be filed by any person who can, in such objections, show to the court or judge good reasons against such change of name.

**History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

**27-31-203. Conduct of hearing.** On the day set for the hearing of said petition or at any time to which the hearing is continued or postponed, due proof of the publication or posting of the required notice as set out in 27-31-201 being made, such application must be heard. On the hearing the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the application.

**History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

**27-31-204. Court order.** The court or judge may make an order changing the name or dismissing the applications, as to the court or judge may seem right and proper.

**History: En. Sec. 2263, C. Civ. Proc. 1895; re-en. Sec. 7363, Rev. C. 1907; amd. Sec. 2, Ch. 7, L. 1911; re-en. Sec. 9966, R.C.M. 1921; re-en. Sec. 9966, R.C.M. 1935; R.C.M. 1947, 93-100-4(part).**

**27-31-205. Repealed.** Sec. 3, Ch. 3, L. 1983.

**History: En. Sec. 2264, C. Civ. Proc. 1895; re-en. Sec. 7364, Rev. C. 1907; re-en. Sec. 9967, R.C.M. 1921; re-en. Sec. 9967, R.C.M. 1935; R.C.M. 1947, 93-100-5; amd. Sec. 61, Ch. 12, L. 1979.**

# CHAPTER 32
# JUDICIAL DETERMINATION OF BIRTH DATE

### Part 1 — General Provisions Petition for Determination

27-32-101. Who may petition — where petition filed.
27-32-102. Contents of petition.
27-32-103. Exclusive jurisdiction of district courts.
27-32-104. Fees.

### Part 2 — Preliminary Procedure — Hearing

27-32-201. Order setting hearing date — notice.
27-32-202. Objections to granting of petition.
27-32-203. Conduct of hearing.
27-32-204. Transfer of proceeding to proper county.

### Part 3 — Judgment — Appeal

27-32-301. Judgment.
27-32-302. Clerk to certify and file judgment.
27-32-303. Appeal.

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**Chapter Cross-References**

Delayed or amended birth certificate, 50-15-204.
Judicial birth facts procedure, 50-15-222.

## Part 1
## General Provisions
## Petition for Determination

**27-32-101. Who may petition — where petition filed.** For the purpose of having a judicial determination of the date of birth, any citizen of the United States, either natural born or naturalized, may file a petition with the clerk of the district court of the county of the citizen's residence.

**History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part); amd. Sec. 740, Ch. 56, L. 2009.**

**27-32-102. Contents of petition.** (1) The petition must be duly verified by the petitioner. The petition must state:

(a) that the petitioner is a citizen of the United States;

(b) that the petitioner has resided in the state of Montana for 1 year preceding the commencement of the action and in the county in which the action is brought for at least 90 days immediately preceding the commencement of the action;

(c) the place of the petitioner's birth;

(d) the names of the petitioner's parents, together with the place of the birth of each parent and their address, if they are living;

(e) the name and address of each of the petitioner's brothers and sisters;

(f) if the address of either of the parents or of any of the brothers or sisters is not known, then their last-known place of address.

(2) If the petitioner was born outside of the United States, then the petition must state:

(a) whether the petitioner's parents came to the United States and, if so, where they came and where they resided or reside;

(b) whether the petitioner's parents or either of them were naturalized within the United States and, if so, when and where the naturalization took place.

**History: En. Sec. 1, Ch. 16, L. 1943; R.C.M. 1947, 93-101-1(part); amd. Sec. 741, Ch. 56, L. 2009.**

**27-32-103. Exclusive jurisdiction of district courts.** The district courts of this state shall have exclusive jurisdiction to hear and determine all petitions hereunder.

**History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).**

**27-32-104. Fees.** The petitioner, upon the filing of the petition, shall pay to the clerk of court the fee for commencing an action, as provided for in 25-1-201, and upon the entry of judgment, the applicant shall pay to the clerk of court an additional fee for entry of judgment, as provided for in 25-1-201. A charge may not be made for posting of the notices required under this part. If the applicant provides a true copy of the judgment rendered, then the clerk of court shall certify the copy without additional charge.

**History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part); amd. Sec. 3, Ch. 570, L. 1993.**

## Part 2
## Preliminary Procedure — Hearing

**27-32-201. Order setting hearing date — notice.** Upon the filing of this petition with the clerk of the district court, an order shall be made by the court or judge thereof fixing the date of the hearing of the petition and directing that notice of such hearing be given as in such order set forth. Notice shall be given by posting in three public places within the county for a period of not less than 10 or more than 30 days, as the court, in its discretion, shall determine.

**History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).**

**27-32-202. Objections to granting of petition.** Any citizen of the United States may appear and object to the granting of such petition, but all such objections shall be made in writing.

**History: En. Sec. 2, Ch. 16, L. 1943; R.C.M. 1947, 93-101-2(part).**

**27-32-203. Conduct of hearing.** At the time fixed for the hearing of such petition, the petitioner must appear and testify. Upon the hearing thereof, affidavits shall be received in evidence and shall have the same force and effect as if the testimony had been taken by deposition.

**History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part).**

**27-32-204. Transfer of proceeding to proper county.** If upon the hearing of the petition it shall appear that the petitioner is entitled to have judgment entered as herein provided but that the petition has been filed in the wrong county, then the court shall, by appropriate order, direct that the proceeding be transferred to the proper county.

**History: En. Sec. 5, Ch. 16, L. 1943; R.C.M. 1947, 93-101-5.**

## Part 3
## Judgment — Appeal

**27-32-301. Judgment.** If the court is satisfied by competent evidence of the sufficiency of the petition that the applicant is a citizen of the United States, that the applicant has been a citizen of the state of Montana for 1 year preceding the filing of the petition and of the county for more than 90 days preceding the filing of the petition, and that the applicant's date of birth is proven, then the court shall render judgment accordingly and that judgment must constitute conclusive evidence of the date of the birth of the applicant.

**History: En. Sec. 3, Ch. 16, L. 1943; R.C.M. 1947, 93-101-3(part); amd. Sec. 742, Ch. 56, L. 2009.**

**27-32-302. Clerk to certify and file judgment.** The clerk of the court shall certify to two copies of a judgment and file one with the department of public health and human services, Helena, and the other with the clerk and recorder of the county in which the judgment was obtained.

**History: En. Sec. 4, Ch. 16, L. 1943; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 93-101-4(part); amd. Sec. 56, Ch. 418, L. 1995; amd. Sec. 81, Ch. 546, L. 1995.**

**27-32-303. Appeal.** Any citizen may appeal from the judgment rendered the same as in civil actions.

**History: En. Sec. 6, Ch. 16, L. 1943; R.C.M. 1947, 93-101-6(part).**

# CHAPTER 33
# MONTANA RELIGIOUS FREEDOM RESTORATION ACT

### Part 1 — General Provisions

27-33-101. Short title.
27-33-102. Legislative findings.
27-33-103. Purpose.
27-33-104. Definitions.
27-33-105. Free exercise of religion protected.

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## Part 1
## General Provisions

**27-33-101. Short title.** This part may be cited as the "Montana Religious Freedom Restoration Act".

**History: En. Sec. 1, Ch. 276, L. 2021.**

**27-33-102. Legislative findings.** The legislature finds that:

(1) the framers of the United States constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the first amendment to the United States constitution;

(2) the framers of the Montana constitution, recognizing free exercise of religion as a fundamental right, secured its protection in the Montana constitution;

(3) laws and other state action that are neutral toward religion may burden the exercise of religion as surely as laws intended to interfere with religious exercise;

(4) state action should not burden exercise of religion without compelling justification;

(5) prior to 1990, laws and other state action burdening exercise of religion had to be justified by a compelling governmental interest; and

(6) the compelling governmental interest test set forth in prior federal court rulings and this part is a workable test and strikes a sensible balance between religious liberty and competing governmental interests.

**History: En. Sec. 2, Ch. 276, L. 2021.**

**27-33-103. Purpose.** The purpose of this part is:

(1) to restore the compelling governmental interest test and to guarantee its application in all cases in which the exercise of religion is substantially burdened by state action; and

(2) to provide a claim or defense to a person or persons whose exercise of religion is substantially burdened by state action.

**History: En. Sec. 3, Ch. 276, L. 2021.**

**27-33-104. Definitions.** As used in this part, the following definitions apply:

(1) "Compelling governmental interest" means a governmental interest of the highest order that cannot otherwise be achieved without burdening the exercise of religion.

(2) "Exercise of religion" means the practice or observance of religion. The term includes but is not limited to the ability to act or refuse to act in a manner substantially motivated by one's sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

(3) "Person" means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation, or other legal entity.

(4) "State action" means the implementation or application of any law, including but not limited to state and local laws, ordinances, rules, regulations, and policies, whether statutory or otherwise, or other action by the state or a political subdivision and a local government, municipality, instrumentality, or public official authorized by law in the state of Montana.

(5) "Substantially burden" means any action that directly or indirectly constrains, inhibits, curtails, or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion and includes but is not limited to withholding of benefits, assessment of criminal, civil, or administrative penalties, or exclusion from governmental programs or access to governmental facilities.

**History: En. Sec. 4, Ch. 276, L. 2021.**

**27-33-105. Free exercise of religion protected.** (1) State action may not substantially burden a person's right to the exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion:

(a) is essential to further a compelling governmental interest; and

(b) is the least restrictive means of furthering that compelling governmental interest.

(2) A person whose exercise of religion has been substantially burdened or is likely to be substantially burdened in violation of this part may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state of Montana or one of its political subdivisions is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the state of Montana or its political subdivisions. Appropriate relief includes but is not limited to injunctive relief, declaratory relief, compensatory damages, and costs and attorney fees.

**History: En. Sec. 5, Ch. 276, L. 2021.**

# CHAPTER 34
# UNIFORM PUBLIC EXPRESSION PROTECTION ACT

## Part 1 — General Provisions

27-34-101. Short title.
27-34-102. Scope — definitions.
27-34-103. Special motion for expedited relief.
27-34-104. Stay.
27-34-105. Hearing.
27-34-106. Proof.
27-34-107. Dismissal of cause of action in whole or in part.
27-34-108. Ruling.
27-34-109. Appeal.
27-34-110. Costs, attorney fees, and expenses.
27-34-111. Construction.
27-34-112. Uniformity of application and construction.

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## Part 1
## General Provisions

**Part Compiler's Comments**

*Effective Date:* Section 16, Ch. 250, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

*Applicability:* Section 17, Ch. 250, L. 2025, provided: "[This act] applies to a civil action filed or cause of action asserted in a civil action on or after [the effective date of this act]." Effective May 1, 2025.

**27-34-101. Short title.** This chapter may be cited as the "Uniform Public Expression Protection Act".

**History: En. Sec. 1, Ch. 250, L. 2025.**

**27-34-102. Scope — definitions.** (1) Except as otherwise provided in subsection (2), this chapter applies to a claim for relief asserted in a civil action against a person based on the person's:

(a) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(b) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(c) exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States constitution or the Montana constitution, on a matter of public concern.

(2) This chapter does not apply to a claim for relief asserted:

(a) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(b) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or

(c) against a person primarily engaged in the business of selling or leasing goods or services if the claim for relief arises out of a communication related to the person's sale or lease of the goods or services.

(3) As used in this section, the following definitions apply:

(a) "Goods or services" does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(b) "Governmental unit" means a public corporation or government or governmental subdivision, agency, or instrumentality.

(c) "Person" means an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

**History: En. Sec. 2, Ch. 250, L. 2025.**

**27-34-103. Special motion for expedited relief.** Not later than 60 days after a party is served with a complaint, crossclaim, counterclaim, third-party complaint, or other pleading that asserts a civil action to which this chapter applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to dismiss the civil action or part of the civil action.

**History: En. Sec. 3, Ch. 250, L. 2025.**

**27-34-104. Stay.** (1) Except as otherwise provided in subsections (4) through (8), on the filing of a motion under 27-34-103:

(a) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are stayed; and

(b) on motion by the moving party, the court may stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling on the motion would adjudicate, or the discovery would relate to, an issue material to the motion under 27-34-103.

(2) A stay under subsection (1) remains in effect until entry of an order ruling on the motion under 27-34-103 and expiration of the time under 27-34-109 for the moving party to appeal the order.

(3) Except as otherwise provided in subsections (5) through (7), if a party appeals from an order ruling on a motion under 27-34-103, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(4) During a stay under subsection (1), the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under 27-34-107(1) and the information is not reasonably available unless discovery is allowed.

(5) A motion under 27-34-110 for costs, attorney fees, and expenses is not subject to a stay under this section.

(6) A stay under this section does not affect a party's ability voluntarily to dismiss a civil action or part of a civil action or move to sever a civil action.

(7) During a stay under this section, the court for good cause may hear and rule on:

(a) a motion unrelated to the motion under 27-34-103; and

(b) a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

(8) The stay provided for in this section does not apply to actions for a temporary or permanent order of protection as set forth in Title 40, chapter 15.

**History: En. Sec. 4, Ch. 250, L. 2025.**

**27-34-105. Hearing.** (1) The court shall hear a motion under 27-34-103 not later than 60 days after filing of the motion unless the court orders a later hearing:

(a) to allow discovery under 27-34-104(4); or

(b) for other good cause.

(2) If the court orders a later hearing under subsection (1)(a), the court shall hear the motion under 27-34-103 not later than 60 days after the court order allowing the discovery, unless the court orders a later hearing under subsection (1)(b).

**History: En. Sec. 5, Ch. 250, L. 2025.**

**27-34-106. Proof.** In ruling on a motion under 27-34-103, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Rule 56 of the Montana Rules of Civil Procedure.

**History: En. Sec. 6, Ch. 250, L. 2025.**

**27-34-107. Dismissal of cause of action in whole or in part.** (1) In ruling on a motion under 27-34-103, the court shall dismiss with prejudice a civil action, or part of a civil action, if:

(a) the moving party establishes under 27-34-102(1) that the act applies;

(b) the responding party fails to establish under 27-34-102(2) that this chapter does not apply; and

(c) either:

(i) the responding party fails to establish a prima facie case as to each essential element of the civil action; or

(ii) the moving party establishes that:

(A) the responding party failed to state a claim upon which relief can be granted; or

(B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the civil action or part of the civil action.

(2) A voluntary dismissal without prejudice of a responding party's civil action, or part of a civil action, that is the subject of a motion under 27-34-103 does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and expenses under 27-34-110.

(3) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under 27-34-103 establishes for the purpose of 27-34-110 that the moving party prevailed on the motion.

**History: En. Sec. 7, Ch. 250, L. 2025.**

**27-34-108. Ruling.** The court shall rule on a motion under 27-34-103 not later than 60 days after a hearing under 27-34-105.

**History: En. Sec. 8, Ch. 250, L. 2025.**

**27-34-109. Appeal.** A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under 27-34-103. The appeal must be filed not later than 30 days after entry of the order in a civil action between private parties, and not later than 60 days after entry of the order in a civil action to which the United States or the state of Montana or a political subdivision is a party.

**History: En. Sec. 9, Ch. 250, L. 2025.**

**27-34-110. Costs, attorney fees, and expenses.** On a motion under 27-34-103, the court shall award court costs, reasonable attorney fees, and reasonable litigation expenses related to the motion:

(1) to the moving party if the moving party prevails on the motion; or

(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

**History: En. Sec. 10, Ch. 250, L. 2025.**

**27-34-111. Construction.** This chapter must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association guaranteed by the United States constitution or the Montana constitution.

**History: En. Sec. 11, Ch. 250, L. 2025.**

**27-34-112. Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History: En. Sec. 12, Ch. 250, L. 2025.**

# TITLE 28

# CONTRACTS AND OTHER OBLIGATIONS

Ch.
1. Obligations in General.
2. Contracts.
3. Interpretation of Contracts.
Chapters 4 through 9 reserved.
10. Agency.
11. Guaranty, Indemnity, and Suretyship.

## CHAPTER 1

## OBLIGATIONS IN GENERAL

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28-1-1202. Effect of offer.
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28-1-1204. Who must make offer of performance.
28-1-1205. To whom offer must be made.
28-1-1206. Where offer may be made.
28-1-1207. When offer must be made.
28-1-1208. Offer of late performance with compensation.
28-1-1209. Offer to be made in good faith.
28-1-1210. Offeror to be able and willing to perform.
28-1-1211. When offer may be conditional.
28-1-1212. Objections to mode of offer — waiver.
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**Part 13 — Prevention of Performance**

28-1-1301. When delay or failure to perform or offer to perform excused.
28-1-1302. Effect when performance prevented by creditor.
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**Part 14 — Accord and Satisfaction**

28-1-1401. Accord — definition and effect.
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28-1-1403. When part performance extinguishes obligation.

**Part 15 — Novation**

28-1-1501. Novation defined.
28-1-1502. Kinds of novation.
28-1-1503. How novation accomplished.
28-1-1504. When acceptance of novation may be rescinded.

**Part 16 — Release of Debtor by Creditor**

28-1-1601. Extinction of obligation by a release.
28-1-1602. What claims survive general release.
28-1-1603. Effect of release of some but not all joint debtors.

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**Chapter Cross-References**

Definition of terms relating to obligations and transactions, 1-1-206.
What ought to have been done, 1-3-220.
Reasonableness, 1-3-233.
Obligation defined, 27-1-105.
Limitation of damages for breach of obligation, 27-1-303.
Breach of obligation to pay money, 27-1-312.
Breach of obligation other than contract, 27-1-317.
Actions based on contract or other obligation, 27-2-202.
Credit transactions, Title 31, ch. 1.
Debtor and creditor relationships, Title 31, ch. 2.

## Part 1
## General Provisions

**28-1-101. Definitions.** (1) An obligation is a legal duty by which a person is bound to do or not to do a certain thing.

(2) Performance of an obligation for the delivery of money only is called payment.

**History: En. Secs. 1920, 2005, Civ. C. 1895; re-en. Secs. 4892, 4927, Rev. C. 1907; re-en. Secs. 7394, 7429, R.C.M. 1921; Cal. Civ. C. Secs. 1427, 1478; Field Civ. C. Secs. 670, 704; re-en. Secs. 7394, 7429, R.C.M. 1935; R.C.M. 1947, 58-101, 58-406.**

**Cross-References**

Obligation defined, 27-1-105.
Contract defined, 28-2-101.

**28-1-102. How obligations arise.** An obligation arises either from:

(1) the contract of the parties; or
(2) the operation of law.

**History: En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).**

**Cross-References**

Obligation defined, 27-1-105.
Contract defined, 28-2-101.

**28-1-103. What rules govern interpretation of contracts and other obligations.** The rules which govern the interpretation of contracts are prescribed by this title and Title 1. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

**History: En. Sec. 1930, Civ. C. 1895; re-en. Sec. 4894, Rev. C. 1907; re-en. Sec. 7396, R.C.M. 1921; Cal. Civ. C. Sec. 1429; Field Civ. C. Sec. 672; re-en. Sec. 7396, R.C.M. 1935; R.C.M. 1947, 58-103; amd. Sec. 1, Ch. 117, L. 1979.**

**Cross-References**

Terms relating to obligations and transactions, 1-1-206.
Statutory construction, Title 1, ch. 2.
Interpretation of instruments, Title 1, ch. 4.
Declaratory judgments, Title 27, ch. 8, part 2.
Executed versus executory contracts, 28-2-104.
How contract extinguished, 28-2-1701.
Interpretation giving effect to contract favored, 28-3-201.
Effect to be given to every part of contract, 28-3-202.
When several contracts taken together, 28-3-203.
How repugnancies reconciled, 28-3-204.
Written or original terms to control printed terms, 28-3-205.
Uncertainty to be resolved against party causing it, 28-3-206.
Interpretation to give effect to mutual intention, 28-3-301.
Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.
Extent to which language governs interpretation, 28-3-401.
Interpretation of words, Title 28, ch. 3, part 5.
Interpretation of contract of suretyship, 28-11-403.
U.C.C. — general definitions and principles of interpretation, Title 30, ch. 1, part 2.

**28-1-104. Relief from forfeiture.** Whenever by the terms of an obligation a party to the obligation incurs a forfeiture or a loss in the nature of a forfeiture by reason of the party's failure to comply with its provisions, the party may be relieved from the obligation upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

**History: En. Sec. 4261, Civ. C. 1895; re-en. Sec. 6039, Rev. C. 1907; re-en. Sec. 8658, R.C.M. 1921; Cal. Civ. C. Sec. 3275; re-en. Sec. 8658, R.C.M. 1935; R.C.M. 1947, 17-102; amd. Sec. 743, Ch. 56, L. 2009.**

**Cross-References**

Definition of negligence and willfully, 1-1-204.
Fraud, 28-2-404 through 28-2-406.

## Part 2
## Obligations Imposed by Law

**28-1-201. General duty of care.** Every person is bound, without contract, to abstain from injuring the person or property of another or infringing upon any of another person's rights.

**History: En. Sec. 2290, Civ. C. 1895; re-en. Sec. 5071, Rev. C. 1907; re-en. Sec. 7573, R.C.M. 1921; Cal. Civ. C. Sec. 1708; Field Civ. C. Sec. 847; re-en. Sec. 7573, R.C.M. 1935; R.C.M. 1947, 58-601; amd. Sec. 744, Ch. 56, L. 2009.**

**Cross-References**

Declaration of rights, Art. II, Mont. Const.
Negligence defined, 1-1-204.
Limit on rights, 1-3-205.
Injury defined, 27-1-106.
Right to compensatory damages, 27-1-202.
Liability for negligence as well as willful acts, 27-1-701.

**28-1-202. Obligation of one who unilaterally decides to render service.** A person who officiously and without the consent of the real or apparent owner of a thing takes it into the person's possession for the purpose of rendering service about it must complete the service and use ordinary care, diligence, and reasonable skill about the service. The person is not entitled to any compensation for the service or expenses, except that the person may deduct actual and necessary expenses incurred by the person about the service from any profits that the service has caused the thing to acquire for its owner and shall account to the owner for the residue.

**History:** **En. Sec. 2760, Civ. C. 1895; re-en. Sec. 5295, Rev. C. 1907; re-en. Sec. 7810, R.C.M. 1921; Cal. Civ. C. Sec. 2078; Field Civ. C. Sec. 1083; re-en. Sec. 7810, R.C.M. 1935; R.C.M. 1947, 41-501; amd. Sec. 745, Ch. 56, L. 2009.**

**Cross-References**

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.
Immunity of persons donating food for free distribution, 27-1-716.
Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Gratuitous deposits, Title 70, ch. 6, part 3.

**28-1-203. Enforcement of obligations arising by operation of law.** An obligation arising from operation of law may be enforced by civil action or proceeding or in the manner provided by law.

**History:** **En. Sec. 1921, Civ. C. 1895; re-en. Sec. 4893, Rev. C. 1907; re-en. Sec. 7395, R.C.M. 1921; Cal. Civ. C. Sec. 1428; Based on Field Civ. C. Sec. 671; re-en. Sec. 7395, R.C.M. 1935; R.C.M. 1947, 58-102(part).**

**Cross-References**

Obligations that cannot be specifically enforced, 27-1-412.
Canceled dealership contracts — repurchase requirements — dealer data, Title 30, ch. 11, part 7.
Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

**28-1-204 through 28-1-210 reserved.**

**28-1-211. Implied covenant of good faith and fair dealing.** The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

**History:** **En. Sec. 1, Ch. 571, L. 1987.**

## Part 3
## Joint Obligations

**Part Cross-References**

Liability of joint debtors, Title 25, ch. 15.
Multiple defendants jointly and severally liable, 27-1-703.
Nature of partner's liability, 35-10-307.

**28-1-301.** *(Temporary)* **Types of obligations involving several persons.** Except as provided in 27-1-703, an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;
(2) several; or
(3) joint and several. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)*

**28-1-301.** *(Effective on occurrence of contingency)* **Types of obligations involving several persons.** Except as provided in 27-1-703 and 27-1-705, an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;
(2) several; or
(3) joint and several.

**History:** **En. Sec. 1940, Civ. C. 1895; re-en. Sec. 4895, Rev. C. 1907; re-en. Sec. 7397, R.C.M. 1921; Cal. Civ. C. Sec. 1430; Field Civ. C. Sec. 673; re-en. Sec. 7397, R.C.M. 1935; R.C.M. 1947, 58-201; amd. Sec. 2, Ch. 253, L. 1987; amd. Sec. 7, Ch. 429, L. 1997.**

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**Cross-References**

Performance by one of several joint debtors, 28-1-1102.
Performance to one of several joint creditors, 28-1-1103.

**28-1-302. Joint obligations and covenants to be taken as joint and several.** Except as provided in 27-1-703, after March 1, 1895, all joint obligations and covenants shall be taken and held to be joint and several obligations and covenants.

**History:** **En. Sec. 1941, Civ. C. 1895; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 4896, Rev. C. 1907; re-en. Sec. 7398, R.C.M. 1921; Cal. Civ. C. Sec. 1431; re-en. Sec. 7398, R.C.M. 1935; R.C.M. 1947, 58-202; amd. Sec. 3, Ch. 253, L. 1987.**

Cross-References

Nature of partner's liability, 35-10-307.

**28-1-303. Right to contribution from joint debtors.** Except as provided in 27-1-703, a party to a joint or joint and several obligation who satisfies more than that party's share of the claim against all may require a proportionate contribution from all the parties joined with that party.

**History:** **En. Sec. 1942, Civ. C. 1895; re-en. Sec. 4897; Rev. C. 1907; re-en. Sec. 7399, R.C.M. 1921; Cal. Civ. C. Sec. 1432; Field Civ. C. Sec. 675; re-en. Sec. 7399, R.C.M. 1935; R.C.M. 1947, 58-203; amd. Sec. 4, Ch. 253, L. 1987; amd. Sec. 746, Ch. 56, L. 2009.**

Cross-References

Compelling contribution or repayment — joint debtor — surety, 25-13-104.
Effect of discharge — right of contribution, 25-15-202.
Multiple defendants jointly and severally liable — right of contribution, 27-1-703.
Performance by one of several joint debtors, 28-1-1102.
Effect of release of some but not all joint debtors, 28-1-1603.

## Part 4
## Conditional Obligations

**28-1-401. What obligations are conditional.** An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

**History:** **En. Sec. 1950, Civ. C. 1895; re-en. Sec. 4898, Rev. C. 1907; re-en. Sec. 7400, R.C.M. 1921; Cal. Civ. C. Sec. 1434; Field Civ. C. Sec. 676; re-en. Sec. 7400, R.C.M. 1935; R.C.M. 1947, 58-204.**

Cross-References

Obligation — definition, 28-1-101.
How obligations arise, 28-1-102.

**28-1-402. Types of conditions.** Conditions may be precedent, concurrent, or subsequent.

**History:** **En. Sec. 1951, Civ. C. 1895; re-en. Sec. 4899, Rev. C. 1907; re-en. Sec. 7401, R.C.M. 1921; Cal. Civ. C. Sec. 1435; Field Civ. C. Sec. 677; re-en. Sec. 7401, R.C.M. 1935; R.C.M. 1947, 58-205.**

**28-1-403. Condition precedent defined.** A condition precedent is one which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed.

**History:** **En. Sec. 1952, Civ. C. 1895; re-en. Sec. 4900, Rev. C. 1907; re-en. Sec. 7402, R.C.M. 1921; Cal. Civ. C. Sec. 1436; Field Civ. C. Sec. 678; re-en. Sec. 7402, R.C.M. 1935; R.C.M. 1947, 58-206.**

Cross-References

Parties who cannot obtain specific performance, 27-1-416.
Condition precedent requiring wrongful act, 70-1-403.

**28-1-404. Condition concurrent defined.** Conditions concurrent are those which are mutually dependent and are to be performed at the same time.

**History:** **En. Sec. 1953, Civ. C. 1895; re-en. Sec. 4901, Rev. C. 1907; re-en. Sec. 7403, R.C.M. 1921; Cal. Civ. C. Sec. 1437; Field Civ. C. Sec. 679; re-en. Sec. 7403, R.C.M. 1935; R.C.M. 1947, 58-207.**

**28-1-405. Condition subsequent defined.** A condition subsequent is one referring to a future event upon the happening of which the obligation becomes no longer binding upon the other party if the other party chooses to take advantage of the condition.

**History:** **En. Sec. 1954, Civ. C. 1895; re-en. Sec. 4902, Rev. C. 1907; re-en. Sec. 7404, R.C.M. 1921; Cal. Civ. C. Sec. 1438; Field Civ. C. Sec. 680; re-en. Sec. 7404, R.C.M. 1935; R.C.M. 1947, 58-208; amd. Sec. 747, Ch. 56, L. 2009.**

**28-1-406. What conditions must be performed before requiring performance by another.** Before a party to an obligation can require another party to perform any act under it, the party shall fulfill all conditions precedent to the act imposed upon that party and must be able and offer to fulfill all concurrent conditions imposed upon that party on the like fulfillment by the other party, except as provided by 28-1-407.

**History:** **En. Sec. 1955, Civ. C. 1895; re-en. Sec. 4903, Rev. C. 1907; re-en. Sec. 7405, R.C.M. 1921; Cal. Civ. C. Sec. 1439; Field Civ. C. Sec. 681; re-en. Sec. 7405, R.C.M. 1935; R.C.M. 1947, 58-209; amd. Sec. 748, Ch. 56, L. 2009.**

Cross-References

Right to specific performance to be mutual, 27-1-414.

**28-1-407. When prior performance of conditions excused.** If a party to an obligation gives notice to another, before the latter is in default, that the party will not perform the obligation and does not retract the notice before the time at which performance upon that party's part is due, the other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon the other party's part in favor of the party giving notice.

**History: En. Sec. 1956, Civ. C. 1895; re-en. Sec. 4904, Rev. C. 1907; re-en. Sec. 7406, R.C.M. 1921; Cal. Civ. C. Sec. 1440; Field Civ. C. Sec. 682; re-en. Sec. 7406, R.C.M. 1935; R.C.M. 1947, 58-210; amd. Sec. 749, Ch. 56, L. 2009.**

**Cross-References**

Enforcement of obligations arising by operation of law, 28-1-203.
Excuse by failure of presupposed conditions, 30-2-615.

**28-1-408. Condition involving forfeiture to be strictly construed.** A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

**History: En. Sec. 1958, Civ. C. 1895; re-en. Sec. 4906, Rev. C. 1907; re-en. Sec. 7408, R.C.M. 1921; Cal. Civ. C. Sec. 1442; Field Civ. C. Sec. 684; re-en. Sec. 7408, R.C.M. 1935; R.C.M. 1947, 58-212.**

**Cross-References**

Construction of terms, 1-4-107.
What rules govern interpretation of contracts and other obligations, 28-1-103.

## Part 5
## Alternative Obligations

**28-1-501. Who may select between alternative performances.** If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection unless it is otherwise provided by the terms of the obligation.

**History: En. Sec. 1970, Civ. C. 1895; re-en. Sec. 4907, Rev. C. 1907; re-en. Sec. 7409, R.C.M. 1921; Cal. Civ. C. Sec. 1448; Field Civ. C. Sec. 685; re-en. Sec. 7409, R.C.M. 1935; R.C.M. 1947, 58-213.**

**Cross-References**

Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.
U.C.C. — sales — revocation of acceptance in whole or in part, 30-2-608.

**28-1-502. How right of selection lost.** If the party having the right of selection between alternative acts does not give notice of the selection to the other party within the time, if any, fixed by the obligation for that purpose or, if a time is not fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

**History: En. Sec. 1971, Civ. C. 1895; re-en. Sec. 4908, Rev. C. 1907; re-en. Sec. 7410, R.C.M. 1921; Cal. Civ. C. Sec. 1449; Field Civ. C. Sec. 686; re-en. Sec. 7410, R.C.M. 1935; R.C.M. 1947, 58-214; amd. Sec. 750, Ch. 56, L. 2009.**

**Cross-References**

Time of performance when not specified, 28-3-601.
U.C.C. — sales — absence of specific time provisions, 30-2-309.

**28-1-503. One alternative to be selected in its entirety.** The party having the right of selection between alternative acts must select one of them in its entirety and cannot select part of one and part of another without the consent of the other party.

**History: En. Sec. 1972, Civ. C. 1895; re-en. Sec. 4909, Rev. C. 1907; re-en. Sec. 7411, R.C.M. 1921; Cal. Civ. C. Sec. 1450; Field Civ. C. Sec. 687; re-en. Sec. 7411, R.C.M. 1935; R.C.M. 1947, 58-215.**

**Cross-References**

Offer of partial performance ineffective, 28-1-1203.

**28-1-504. When obligation to be interpreted as though a particular alternative did not exist.** If one of the alternative acts required by an obligation is such as the law will not enforce or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other or others stood alone.

**History: En. Sec. 1973, Civ. C. 1895; re-en. Sec. 4910, Rev. C. 1907; re-en. Sec. 7412, R.C.M. 1921; Cal. Civ. C. Sec. 1451; Field Civ. C. Sec. 688; re-en. Sec. 7412, R.C.M. 1935; R.C.M. 1947, 58-216; amd. Sec. 2, Ch. 117, L. 1979.**

**Cross-References**

What rules govern interpretation of contracts and other obligations, 28-1-103.
Illegal objects and provisions, Title 28, ch. 2, part 7.

## Parts 6 through 9 reserved

## Part 10
## Transfer of Rights and Duties Under Obligation

**Part Cross-References**

Registration of public obligations, Title 17, ch. 5, part 11.
Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.
Survival of counterclaim — death or assignment, 27-1-502.
What defenses to action survive assignment of right to action, 27-1-503.
U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.
U.C.C. — sales — power to transfer, 30-2-403.
U.C.C. — negotiable instruments — transfer and negotiation, Title 30, ch. 3, part 2.
Transfer of property, Title 70, ch. 1, part 5.

**28-1-1001. Rights arising out of obligation transferable.** A right arising out of an obligation is the property of the person to whom it is due and may be transferred as the property of that person. Unless otherwise provided by law, a transfer by written, oral, electronic, or other means creates a valid assignment upon the transfer.

**History: En. Sec. 1981, Civ. C. 1895; re-en. Sec. 4912, Rev. C. 1907; re-en. Sec. 7414, R.C.M. 1921; Cal. Civ. C. Sec. 1458; Field Civ. C. Sec. 690; re-en. Sec. 7414, R.C.M. 1935; R.C.M. 1947, 58-302; amd. Sec. 7, Ch. 392, L. 2005.**

**Cross-References**

Kinds of novation, 28-1-1502.

**28-1-1002. When burden of obligation may be transferred.** The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise, except as provided by Title 70, chapter 17, part 2.

**History: En. Sec. 1980, Civ. C. 1895; re-en. Sec. 4911, Rev. C. 1907; re-en. Sec. 7413, R.C.M. 1921; Cal. Civ. C. Sec. 1457; Field Civ. C. Sec. 689; re-en. Sec. 7413, R.C.M. 1935; R.C.M. 1947, 58-301; amd. Sec. 3, Ch. 117, L. 1979.**

**Cross-References**

Kinds of novation, 28-1-1502.
Voluntary transfer — applicability of contract rules, 70-1-502.

## Part 11
## Extinction of Obligation by Performance

**Part Cross-References**

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

**28-1-1101. Extinction of obligation by full performance.** Full performance of an obligation by the party whose duty it is to perform it or by any other person on that party's behalf and with that party's assent, if accepted by the creditor, extinguishes it.

**History: En. Sec. 2000, Civ. C. 1895; re-en. Sec. 4922, Rev. C. 1907; re-en. Sec. 7424, R.C.M. 1921; Cal. Civ. C. Sec. 1473; Field Civ. C. Sec. 699; re-en. Sec. 7424, R.C.M. 1935; R.C.M. 1947, 58-401; amd. Sec. 751, Ch. 56, L. 2009.**

**Cross-References**

Specific performance, 27-1-411 through 27-1-421.
Extinction of contracts, 28-2-1701.

**28-1-1102. Performance by one of several joint debtors.** Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all.

**History: En. Sec. 2001, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 7425, R.C.M. 1921; Cal. Civ. C. Sec. 1474; Field Civ. C. Sec. 700; re-en. Sec. 7425, R.C.M. 1935; R.C.M. 1947, 58-402.**

**Cross-References**

Liability of joint debtors, Title 25, ch. 15.
Right to contribution from joint debtors, 28-1-303.

**28-1-1103. Performance to one of several joint creditors.** An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership, which is regulated by Title 70, chapter 6.

**History: En. Sec. 2002, Civ. C. 1895; re-en. Sec. 4924, Rev. C. 1907; re-en. Sec. 7426, R.C.M. 1921; Cal. Civ. C. Sec. 1475; Field Civ. C. Sec. 701; re-en. Sec. 7426, R.C.M. 1935; R.C.M. 1947, 58-403; amd. Sec. 4, Ch. 117, L. 1979.**

**Cross-References**

Joint obligations, Title 28, ch. 1, part 3.
Creditor defined, 31-2-102.
Relative rights of different creditors, 31-2-105.

**28-1-1104. Extinction when directions of creditor followed.** If a creditor or any one of two or more joint creditors at any time directs the debtor to perform the debtor's obligations in a particular manner, the obligation is extinguished by performance in that manner even though the creditor does not receive the benefit of the performance.

**History: En. Sec. 2003, Civ. C. 1895; re-en. Sec. 4925, Rev. C. 1907; re-en. Sec. 7427, R.C.M. 1921; Cal. Civ. C. Sec. 1476; Field Civ. C. Sec. 702; re-en. Sec. 7427, R.C.M. 1935; R.C.M. 1947, 58-404; amd. Sec. 752, Ch. 56, L. 2009.**

**28-1-1105. When partial performance extinguishes part of obligation.** Partial performance of an indivisible obligation extinguishes a corresponding proportion of the obligation if the benefit of the performance is voluntarily retained by the creditor, but not otherwise. If the partial performance is of such a nature that the creditor cannot avoid retaining it without injuring the creditor's own property, the retention is not presumed to be voluntary.

**History: En. Sec. 2004, Civ. C. 1895; re-en. Sec. 4926, Rev. C. 1907; re-en. Sec. 7428, R.C.M. 1921; Cal. Civ. C. Sec. 1477; Field Civ. C. Sec. 703; re-en. Sec. 7428, R.C.M. 1935; R.C.M. 1947, 58-405; amd. Sec. 753, Ch. 56, L. 2009.**

**Cross-References**

Offer of partial performance ineffective, 28-1-1203.
When part performance extinguishes obligation, 28-1-1403.
Effect of part performance on guarantor's liability, 28-11-216.
U.C.C. — sales — revocation of acceptance in whole or in part, 30-2-608.

**28-1-1106. Application of performance when there are several obligations.** Whenever a debtor under several obligations to another does an act by way of performance, in whole or in part, that is equally applicable to two or more of the obligations, the performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that the performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

(2) If no intention or desire is then manifested, the creditor, within a reasonable time after performance, may apply it toward the extinction of any obligation the performance of which was due to the creditor from the debtor at the time of the performance, except that if similar obligations were due to the creditor, both individually and as a trustee, the creditor shall, unless otherwise directed by the debtor, apply the performance to the extinction of all obligations in equal proportion. An application once made by the creditor cannot be rescinded without the consent of the debtor.

(3) If application is not made as prescribed in subsection (1) or (2) within the time prescribed, the performance must be applied to the extinction of obligations in the following order and, if there is more than one obligation of a particular class, to the extinction of all in that class, ratably:

(a) first—interest due at the time of the performance;
(b) second—principal due at that time;
(c) third—the obligation earliest in date of maturity;
(d) fourth—an obligation not secured by a lien or collateral undertaking;
(e) fifth—an obligation secured by a lien or collateral undertaking.

**History: En. Sec. 2006, Civ. C. 1895; re-en. Sec. 4928, Rev. C. 1907; re-en. Sec. 7430, R.C.M. 1921; Cal. Civ. C. Sec. 1479; Based on Field Civ. C. Sec. 705; re-en. Sec. 7430, R.C.M. 1935; R.C.M. 1947, 58-407; amd. Sec. 5, Ch. 117, L. 1979; amd. Sec. 754, Ch. 56, L. 2009.**

**Cross-References**

Intention of parties, Title 28, ch. 3, part 3.
Perfection and priority — security interests, Title 30, ch. 9A, part 3.
Liens, Title 71, ch. 3.

**28-1-1107 through 28-1-1110 reserved.**

**28-1-1111. Receipt for money, instrument, or property delivered.** Whoever pays money or delivers an instrument or property is entitled to a written receipt therefor from the person to whom the payment or delivery is made and may demand a proper signature to such receipt as a condition of the payment or delivery.

**History: (1)En. Sec. 3411, C. Civ. Proc. 1895; re-en. Sec. 8037, Rev. C. 1907; re-en. Sec. 10681, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2075; re-en. Sec. 10681, R.C.M. 1935; Sec. 93-2201-2, R.C.M. 1947; (2)En. Sec. 2034, Civ.**

**C. 1895; re-en. Sec. 4943, Rev. C. 1907; re-en. Sec. 7445, R.C.M. 1921; Cal. Civ. C. Sec. 1499; Field Civ. C. Sec. 720; re-en. Sec. 7445, R.C.M. 1935; Sec. 58-422, R.C.M. 1947; R.C.M. 1947, 58-422, 93-2201-2; amd. Sec. 6, Ch. 117, L. 1979.**

**Cross-References**

U.C.C. — sales — when documents deliverable on acceptance — when on payment, 30-2-514.
Warehouse receipts, Title 30, ch. 7.
Notice and receipt of payment for retail installment sales, 31-1-236.

**28-1-1112. Objections to tender — waiver.** The person to whom a tender is made shall at the time specify any objection the person may have to the money, instrument, or property or the person must be considered to have waived the objection. If the objections are to the amount of money, the terms of the instrument, or the amount or kind of property, the person shall specify the amount, terms, or kind that the person requires or be precluded from objecting afterward.

**History: En. Sec. 3412, C. Civ. Proc. 1895; re-en. Sec. 8038, Rev. C. 1907; re-en. Sec. 10682, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2076; re-en. Sec. 10682, R.C.M. 1935; R.C.M. 1947, 93-2201-3; amd. Sec. 755, Ch. 56, L. 2009.**

**Cross-References**

Manner of seller's tender of delivery, 30-2-503.
U.C.C. — sales — effect of seller's tender — delivery on condition, 30-2-507.

**28-1-1113. Creditor's retention of thing that creditor refuses to accept.** If anything is given to a creditor by way of performance that the creditor refuses to accept as performance, the creditor is not bound to return it without demand but, if the creditor retains it, the creditor is a gratuitous depositary of the thing.

**History: En. Sec. 2040, Civ. C. 1895; re-en. Sec. 4949, Rev. C. 1907; re-en. Sec. 7451, R.C.M. 1921; Cal. Civ. C. Sec. 1505; Field Civ. C. Sec. 726; re-en. Sec. 7451, R.C.M. 1935; R.C.M. 1947, 58-428; amd. Sec. 756, Ch. 56, L. 2009.**

**Cross-References**

Custody of thing other than money, 28-1-1224.
Effect of refusal to accept performance before offer, 28-1-1304.
U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Gratuitous deposit, Title 70, ch. 6, part 3.

## Part 12
## Extinction of Obligation by Offer of Performance

**Part Cross-References**

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

**28-1-1201. When obligation extinguished by offer of performance.** An obligation is extinguished by an offer of performance made in conformity to the rules prescribed in this part and with intent to extinguish the obligation.

**History: En. Sec. 2020, Civ. C. 1895; re-en. Sec. 4929, Rev. C. 1907; re-en. Sec. 7431, R.C.M. 1921; Cal. Civ. C. Sec. 1485; Field Civ. C. Sec. 706; re-en. Sec. 7431, R.C.M. 1935; R.C.M. 1947, 58-408.**

**Cross-References**

Manner of seller's tender of delivery, 30-2-503.

**28-1-1202. Effect of offer.** (1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2) An offer of payment or other performance duly made stops the running of interest on the obligation and has the same effect upon all incidents of the obligation as a performance thereof, whether or not the title to anything offered is transferred to the creditor.

**History: (1)En. Sec. 3410, C. Civ. Proc. 1895; re-en. Sec. 8036, Rev. C. 1907; re-en. Sec. 10680, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2074; re-en. Sec. 10680, R.C.M. 1935; Sec. 93-2201-1, R.C.M. 1947; (2)En. Sec. 2039, Civ. C. 1895; re-en. Sec. 4948, Rev. C. 1907; re-en. Sec. 7450, R.C.M. 1921; Cal. Civ. C. Sec. 1504; Field Civ. C. Sec. 725; re-en. Sec. 7450, R.C.M. 1935; Sec. 58-427, R.C.M. 1947; R.C.M. 1947, 58-427, 93-2201-1; amd. Sec. 7, Ch. 117, L. 1979.**

**Cross-References**

Firm offer, 30-2-205.
Loans of money — interest rates, Title 31, ch. 1, part 1.

**28-1-1203. Offer of partial performance ineffective.** An offer of partial performance is of no effect.

**History: En. Sec. 2021, Civ. C. 1895; re-en. Sec. 4930, Rev. C. 1907; re-en. Sec. 7432, R.C.M. 1921; Cal. Civ. C. Sec. 1486; Field Civ. C. Sec. 707; re-en. Sec. 7432, R.C.M. 1935; R.C.M. 1947, 58-409.**

**Cross-References**

When partial performance extinguishes part of obligation, 28-1-1105.

When part performance extinguishes obligation, 28-1-1403.

**28-1-1204. Who must make offer of performance.** An offer of performance must be made by the debtor or by some person on the debtor's behalf and with the debtor's assent.

**History: En. Sec. 2022, Civ. C. 1895; re-en. Sec. 4931, Rev. C. 1907; re-en. Sec. 7433, R.C.M. 1921; Cal. Civ. C. Sec. 1487; Field Civ. C. Sec. 708; re-en. Sec. 7433, R.C.M. 1935; R.C.M. 1947, 58-410; amd. Sec. 757, Ch. 56, L. 2009.**

**Cross-References**

What acts agent may perform, 28-10-105.

**28-1-1205. To whom offer must be made.** An offer of performance must be made to the creditor, to any one or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation.

**History: En. Sec. 2023, Civ. C. 1895; re-en. Sec. 4932, Rev. C. 1907; re-en. Sec. 7434, R.C.M. 1921; Cal. Civ. C. Sec. 1488; Based on Field Civ. C. Sec. 709; re-en. Sec. 7434, R.C.M. 1935; R.C.M. 1947, 58-411; amd. Sec. 8, Ch. 117, L. 1979.**

**Cross-References**

What acts agent may perform, 28-10-105.

**28-1-1206. Where offer may be made.** In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

(1) at any place appointed by the creditor;

(2) wherever the person to whom the offer ought to be made can be found;

(3) if the person cannot, with reasonable diligence, be found within the state and within a reasonable distance from the person's residence or place of business or if the person evades the debtor, then at the person's residence or place of business if the residence or business can, with reasonable diligence, be found within the state; or

(4) if this cannot be done, then at any place within this state.

**History: En. Sec. 2024, Civ. C. 1895; re-en. Sec. 4933, Rev. C. 1907; re-en. Sec. 7435, R.C.M. 1921; Cal. Civ. C. Sec. 1489; Field Civ. C. Sec. 710; re-en. Sec. 7435, R.C.M. 1935; R.C.M. 1947, 58-412; amd. Sec. 758, Ch. 56, L. 2009.**

**Cross-References**

U.C.C. — sales — absence of specified place for delivery, 30-2-308.

Manner of seller's tender of delivery, 30-2-503.

**28-1-1207. When offer must be made.** (1) Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before or afterwards.

(2) Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon reasonable demand, has refused to perform.

**History: (1)En. Sec. 2025, Civ. C. 1895; re-en. Sec. 4934, Rev. C. 1907; re-en. Sec. 7436, R.C.M. 1921; Cal. Civ. C. Sec. 1490; Field Civ. C. Sec. 711; re-en. Sec. 7436, R.C.M. 1935; Sec. 58-413, R.C.M. 1947; (2)En. Sec. 2026, Civ. C. 1895; re-en. Sec. 4935, Rev. C. 1907; re-en. Sec. 7437, R.C.M. 1921; Cal. Civ. C. Sec. 1491; Field Civ. C. Sec. 712; re-en. Sec. 7437, R.C.M. 1935; Sec. 58-414, R.C.M. 1947; R.C.M. 1947, 58-413, 58-414.**

**Cross-References**

Time of performance when not specified, 28-3-601.

U.C.C. — sales — absence of specific time provisions, 30-2-309.

**28-1-1208. Offer of late performance with compensation.** Where delay in performance is capable of exact and entire compensation and time has not been expressly declared to be of the essence of the obligation, an offer of performance accompanied with an offer of such compensation may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

**History: En. Sec. 2027, Civ. C. 1895; re-en. Sec. 4936, Rev. C. 1907; re-en. Sec. 7438, R.C.M. 1921; Cal. Civ. C. Sec. 1492; Field Civ. C. Sec. 713; re-en. Sec. 7438, R.C.M. 1935; R.C.M. 1947, 58-415.**

**Cross-References**

Cure by seller of improper tender or delivery — replacement, 30-2-508.

**28-1-1209. Offer to be made in good faith.** An offer of performance must be made in good faith and in such manner as is most likely, under the circumstances, to benefit the creditor.

**History: En. Sec. 2028, Civ. C. 1895; re-en. Sec. 4937, Rev. C. 1907; re-en. Sec. 7439, R.C.M. 1921; Cal. Civ. C. Sec. 1493; Field Civ. C. Sec. 714; re-en. Sec. 7439, R.C.M. 1935; R.C.M. 1947, 58-416.**

**Cross-References**

U.C.C. — good faith defined, 30-1-201.
Effect of seller's tender — delivery on condition, 30-2-507.

**28-1-1210. Offeror to be able and willing to perform.** An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

**History: En. Sec. 2030, Civ. C. 1895; re-en. Sec. 4939, Rev. C. 1907; re-en. Sec. 7441, R.C.M. 1921; Cal. Civ. C. Sec. 1495; Field Civ. C. Sec. 716; re-en. Sec. 7441, R.C.M. 1935; R.C.M. 1947, 58-418.**

**Cross-References**

Effect of seller's tender — delivery on condition, 30-2-507.
Right to adequate assurance of performance, 30-2-609.

**28-1-1211. When offer may be conditional.** (1) An offer of performance must be free from any conditions that the creditor is not bound to perform.

(2) When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on the debtor's part, the debtor may make the offer depend upon the due performance of the condition.

**History: En. Secs. 2029, 2033, Civ. C. 1895; re-en. Secs. 4938, 4942, Rev. C. 1907; re-en. Secs. 7440, 7444, R.C.M. 1921; Cal. Civ. C. Secs. 1494, 1498; Field Civ. C. Secs. 715, 719; re-en. Secs. 7440, 7444, R.C.M. 1935; R.C.M. 1947, 58-417, 58-421; amd. Sec. 759, Ch. 56, L. 2009.**

**Cross-References**

Condition precedent, 28-1-403.
Condition concurrent, 28-1-404.
How proposal revoked, 28-2-512.
U.C.C. — title, creditors, and good faith purchasers, Title 30, ch. 2, part 4.

**28-1-1212. Objections to mode of offer — waiver.** All objections to the mode of an offer of performance that the creditor has an opportunity to state at the time to the person making the offer and that could then be made unnecessary by the person are waived by the creditor if not then stated. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property offered, the creditor shall specify the amount, terms, or kind that the creditor requires.

**History: En. Sec. 2036, Civ. C. 1895; re-en. Sec. 4945, Rev. C. 1907; re-en. Sec. 7447, R.C.M. 1921; Cal. Civ. C. Sec. 1501; Field Civ. C. Sec. 722; re-en. Sec. 7447, R.C.M. 1935; R.C.M. 1947, 58-424; amd. Sec. 9, Ch. 117, L. 1979; amd. Sec. 760, Ch. 56, L. 2009.**

**Cross-References**

Manner of seller's tender of delivery, 30-2-503.
Waiver of buyer's objections by failure to particularize, 30-2-605.

**28-1-1213 through 28-1-1220 reserved.**

**28-1-1221. Title to thing offered.** The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies the debtor's intention to that effect.

**History: En. Sec. 2037, Civ. C. 1895; re-en. Sec. 4946, Rev. C. 1907; re-en. Sec. 7448, R.C.M. 1921; Cal. Civ. C. Sec. 1502; Field Civ. C. Sec. 723; re-en. Sec. 7448, R.C.M. 1935; R.C.M. 1947, 58-425; amd. Sec. 761, Ch. 56, L. 2009.**

**Cross-References**

Passing of title, 30-2-401.
Manner of seller's tender of delivery, 30-2-503.

**28-1-1222. Production of thing to be delivered.** The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted.

**History: En. Sec. 2031, Civ. C. 1895; re-en. Sec. 4940, Rev. C. 1907; re-en. Sec. 7442, R.C.M. 1921; Cal. Civ. C. Sec. 1496; Field Civ. C. Sec. 717; re-en. Sec. 7442, R.C.M. 1935; R.C.M. 1947, 58-419.**

**Cross-References**

U.C.C. — sales — options and cooperation respecting performance, 30-2-311.

**28-1-1223. Thing offered to be kept separate.** A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

**History: En. Sec. 2032, Civ. C. 1895; re-en. Sec. 4941, Rev. C. 1907; re-en. Sec. 7443, R.C.M. 1921; Cal. Civ. C. Sec. 1497; Field Civ. C. Sec. 718; re-en. Sec. 7443, R.C.M. 1935; R.C.M. 1947, 58-420.**

**Cross-References**

Casualty to identified goods, 30-2-613.

**28-1-1224. Custody of thing other than money.** The person offering a thing other than money by way of performance shall, if the person means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it or until the person has given reasonable notice to the creditor that the person will retain it no longer and, if with reasonable diligence the person can find a suitable depositary for the thing, until the person has deposited it with the suitable depositary.

**History: En. Sec. 2038, Civ. C. 1895; re-en. Sec. 4947, Rev. C. 1907; re-en. Sec. 7449, R.C.M. 1921; Cal. Civ. C. Sec. 1503; Field Civ. C. Sec. 724; re-en. Sec. 7449, R.C.M. 1935; R.C.M. 1947, 58-426; amd. Sec. 762, Ch. 56, L. 2009.**

**Cross-References**

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
U.C.C. — sales — merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Buyer's security interest in rejected goods, 30-2-711.
Deposit for hire, Title 70, ch. 6, part 4.

**28-1-1225. Deposit of money offered in payment.** An obligation for the payment of money is extinguished by a due offer of payment if the amount is immediately deposited in the name of the creditor with some bank of deposit within this state of good repute and notice thereof is given to the creditor.

**History: En. Sec. 2035, Civ. C. 1895; re-en. Sec. 4944, Rev. C. 1907; re-en. Sec. 7446, R.C.M. 1921; Cal. Civ. C. Sec. 1500; Field Civ. C. Sec. 721; re-en. Sec. 7446, R.C.M. 1935; R.C.M. 1947, 58-423.**

**Cross-References**

U.C.C. — sales — tender of payment by buyer — payment by check, 30-2-511.
Liquidation or limitation of damages — deposits, 30-2-718.

## Part 13
## Prevention of Performance

**Part Cross-References**

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

**28-1-1301. When delay or failure to perform or offer to perform excused.** The want of performance of an obligation or of an offer of performance, in whole or in part, or any delay therein is excused by the following causes, to the extent to which they operate:

(1) when such performance or offer is prevented or delayed by the act of the creditor or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

(2) when it is prevented or delayed by an irresistible, superhuman cause or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or

(3) when the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

**History: En. Sec. 2050, Civ. C. 1895; re-en. Sec. 4950, Rev. C. 1907; re-en. Sec. 7452, R.C.M. 1921; Cal. Civ. C. Sec. 1511; Field Civ. C. Sec. 727; re-en. Sec. 7452, R.C.M. 1935; R.C.M. 1947, 58-429.**

**Cross-References**

Offer of late performance with compensation, 28-1-1208.
Contracts that violate policy of law — exemption from responsibility, 28-2-702.
Excuse by failure of presupposed conditions, 30-2-615.

**28-1-1302. Effect when performance prevented by creditor.** If the performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits that the debtor would have obtained if the obligation had been performed by both parties.

**History: En. Sec. 2051, Civ. C. 1895; re-en. Sec. 4951, Rev. C. 1907; re-en. Sec. 7453, R.C.M. 1921; Cal. Civ. C. Sec. 1512; Field Civ. C. Sec. 728; re-en. Sec. 7453, R.C.M. 1935; R.C.M. 1947, 58-430; amd. Sec. 763, Ch. 56, L. 2009.**

**Cross-References**

Right to adequate assurance of performance, 30-2-609.
U.C.C. — sales — buyer's remedies in general, 30-2-711.

**28-1-1303. Effect when performance prevented by other causes.** If full performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which the debtor would have been entitled upon full performance, according to the benefit that the creditor receives from the actual performance.

**History: En. Sec. 2052, Civ. C. 1895; re-en. Sec. 4952, Rev. C. 1907; re-en. Sec. 7454, R.C.M. 1921; Cal. Civ. C. Sec. 1514; re-en. Sec. 7454, R.C.M. 1935; R.C.M. 1947, 58-431; amd. Sec. 10, Ch. 117, L. 1979; amd. Sec. 764, Ch. 56, L. 2009.**

**Cross-References**

Excuse by failure of presupposed conditions, 30-2-615.

**28-1-1304. Effect of refusal to accept performance before offer.** A refusal by a creditor to accept performance, made before an offer of performance, is equivalent to an offer and refusal unless, before performance is actually due, the creditor gives notice to the debtor of the creditor's willingness to accept performance.

**History: En. Sec. 2053, Civ. C. 1895; re-en. Sec. 4953, Rev. C. 1907; re-en. Sec. 7455, R.C.M. 1921; Cal. Civ. C. Sec. 1515; Field Civ. C. Sec. 731; re-en. Sec. 7455, R.C.M. 1935; R.C.M. 1947, 58-432; amd. Sec. 765, Ch. 56, L. 2009.**

**Cross-References**

Extinction of obligation by full performance, 28-1-1101.
Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Anticipatory repudiation, 30-2-610.
Retraction of anticipatory repudiation, 30-2-611.

## Part 14
## Accord and Satisfaction

**Part Cross-References**

Compromise or settlement of debt by unsealed writing, 1-4-207.

**28-1-1401. Accord — definition and effect.** An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

**History: Ap. p. Sec. 2060, Civ. C. 1895; re-en. Sec. 4954, Rev. C. 1907; re-en. Sec. 7456, R.C.M. 1921; Cal. Civ. C. Sec. 1521; Based on Field Civ. C. Sec. 732; re-en. Sec. 7456, R.C.M. 1935; Sec. 58-501, R.C.M. 1947; Ap. p. Sec. 2061, Civ. C. 1895; re-en. Sec. 4955, Rev. C. 1907; re-en. Sec. 7457, R.C.M. 1921; Cal. Civ. C. Sec. 1522; Field Civ. C. Sec. 733; re-en. Sec. 7457, R.C.M. 1935; Sec. 58-502, R.C.M. 1947; R.C.M. 1947, 58-501, 58-502.**

**Cross-References**

U.C.C. — sales — substituted performance, 30-2-614.

**28-1-1402. Satisfaction — definition and effect.** Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction.

**History: En. Sec. 2062, Civ. C. 1895; re-en. Sec. 4956, Rev. C. 1907; re-en. Sec. 7458, R.C.M. 1921; Cal. Civ. C. Sec. 1523; Field Civ. C. Sec. 734; re-en. Sec. 7458, R.C.M. 1935; R.C.M. 1947, 58-503.**

**Cross-References**

U.C.C. — sales — substituted performance, 30-2-614.

**28-1-1403. When part performance extinguishes obligation.** Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

**History: En. Sec. 2063, Civ. C. 1895; re-en. Sec. 4957, Rev. C. 1907; re-en. Sec. 7459, R.C.M. 1921; Cal. Civ. C. Sec. 1524; re-en. Sec. 7459, R.C.M. 1935; R.C.M. 1947, 58-504.**

**Cross-References**

When partial performance extinguishes part of obligation, 28-1-1105.
Offer of partial performance ineffective, 28-1-1203.
Effect of part performance on guarantor's liability, 28-11-216.
U.C.C. — sales — substituted performance, 30-2-614.

## Part 15
## Novation

**Part Cross-References**
Contracts, Title 28, ch. 2.
Interpretation of contracts, Title 28, ch. 3.

**28-1-1501. Novation defined.** "Novation" is the substitution of a new obligation for an existing one.

**History: En. Sec. 2070, Civ. C. 1895; re-en. Sec. 4958, Rev. C. 1907; re-en. Sec. 7460, R.C.M. 1921; Cal. Civ. C. Sec. 1530; Field Civ. C. Sec. 736; re-en. Sec. 7460, R.C.M. 1935; R.C.M. 1947, 58-505.**

**28-1-1502. Kinds of novation.** Novation is made by the substitution of:

(1) a new obligation between the same parties with intent to extinguish the old obligation;

(2) a new debtor in place of the old one with intent to release the latter; or

(3) a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

**History: En. Sec. 2071, Civ. C. 1895; re-en. Sec. 4959, Rev. C. 1907; re-en. Sec. 7461, R.C.M. 1921; Cal. Civ. C. Sec. 1531; Field Civ. C. Sec. 737; re-en. Sec. 7461, R.C.M. 1935; R.C.M. 1947, 58-506.**

**Cross-References**
One alternative to be selected in its entirety, 28-1-503.
Rights arising out of obligation transferable, 28-1-1001.
When burden of obligation may be transferred, 28-1-1002.
U.C.C. — sales — delegation of performance — assignment of rights, 30-2-210.

**28-1-1503. How novation accomplished.** Novation is made by contract and is subject to all the rules concerning contracts in general.

**History: En. Sec. 2072, Civ. C. 1895; re-en. Sec. 4960, Rev. C. 1907; re-en. Sec. 7462, R.C.M. 1921; Cal. Civ. C. Sec. 1532; Field Civ. C. Sec. 738; re-en. Sec. 7462, R.C.M. 1935; R.C.M. 1947, 58-507.**

**Cross-References**
What rules govern interpretation of contracts and other obligations, 28-1-103.
How contract extinguished, 28-2-1701.

**28-1-1504. When acceptance of novation may be rescinded.** When the obligation of a third person or an order upon the third person is accepted in satisfaction, the creditor may rescind the acceptance if:

(1) the debtor prevents the third person from complying with the order or from fulfilling the obligation;

(2) at the time the obligation or order is received, the third person is insolvent and the fact is unknown to the creditor; or

(3) before the creditor can, with reasonable diligence, present the order to the third person upon whom it is given, the third person becomes insolvent.

**History: En. Sec. 2073, Civ. C. 1895; re-en. Sec. 4961, Rev. C. 1907; re-en. Sec. 7463, R.C.M. 1921; Cal. Civ. C. Sec. 1533; Based on Field Civ. C. Sec. 740; re-en. Sec. 7463, R.C.M. 1935; R.C.M. 1947, 58-508; amd. Sec. 766, Ch. 56, L. 2009.**

**Cross-References**
How rescission accomplished, 28-2-1713.
Modification, rescission, and waiver, 30-2-209.

## Part 16
## Release of Debtor by Creditor

**28-1-1601. Extinction of obligation by a release.** An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration or in writing, with or without new consideration.

**History: En. Sec. 2080, Civ. C. 1895; re-en. Sec. 4962, Rev. C. 1907; re-en. Sec. 7464, R.C.M. 1921; Cal. Civ. C. Sec. 1541; Based on Field Civ. C. Sec. 741; re-en. Sec. 7464, R.C.M. 1935; R.C.M. 1947, 58-509.**

**Cross-References**
Discharge of one joint debtor, 25-15-201.

**28-1-1602. What claims survive general release.** A general release does not extend to claims that the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which, if known by the creditor, must have materially affected the creditor's settlement with the debtor.

**History:** En. Sec. 2081, Civ. C. 1895; re-en. Sec. 4963, Rev. C. 1907; re-en. Sec. 7465, R.C.M. 1921; Cal. Civ. C. Sec. 1542; Based on Field Civ. C. Sec. 742; re-en. Sec. 7465, R.C.M. 1935; R.C.M. 1947, 58-510; amd. Sec. 767, Ch. 56, L. 2009.

**Cross-References**

Mistake, 28-2-408 through 28-2-411.

**28-1-1603. Effect of release of some but not all joint debtors.** A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors, nor does it affect their rights to contribution from the released debtor.

**History:** En. Sec. 2082, Civ. C. 1895; re-en. Sec. 4964, Rev. C. 1907; re-en. Sec. 7466, R.C.M. 1921; Cal. Civ. C. Sec. 1543; Field Civ. C. Sec. 743; re-en. Sec. 7466, R.C.M. 1935; R.C.M. 1947, 58-511; amd. Sec. 768, Ch. 56, L. 2009.

**Cross-References**

Discharge of joint debtor, Title 25, ch. 15, part 2.
Multiple defendants jointly and severally liable — right of contribution, 27-1-703.
Joint obligations, Title 28, ch. 1, part 3.

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## CONTRACTS

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## Part 1
## General Provisions

**Part Cross-References**

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Definition of retail installment contract, 31-1-202.
Requirements of retail installment contracts, 31-1-231.

**28-2-101. Contract defined.** A contract is an agreement to do or not to do a certain thing.

**History: En. Sec. 2090, Civ. C. 1895; re-en. Sec. 4965, Rev. C. 1907; re-en. Sec. 7467, R.C.M. 1921; Cal. Civ. C. Sec. 1549; Field Civ. C. Sec. 744; re-en. Sec. 7467, R.C.M. 1935; R.C.M. 1947, 13-101.**

**Cross-References**

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

General definitions — U.C.C. — "contract", 30-1-201.

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How liens created, 71-3-102.

Definition of contract as used in mining, 82-4-403.

**28-2-102. Essential elements of a contract.** It is essential to the existence of a contract that there be:

(1) identifiable parties capable of contracting;
(2) their consent;
(3) a lawful object; and
(4) a sufficient cause or consideration.

**History: En. Secs. 2091, 2102, Civ. C. 1895; re-en. Secs. 4966, 4969, Rev. C. 1907; re-en. Secs. 7468, 7471, R.C.M. 1921; Cal. Civ. C. Secs. 1550, 1558; Field Civ. C. Secs. 745, 748; re-en. Secs. 7468, 7471, R.C.M. 1935; R.C.M. 1947, 13-102, 13-203; amd. Sec. 11, Ch. 117, L. 1979.**

**Cross-References**

Ratification of contract void for want of consent, 28-2-304.

What is unlawful, 28-2-701.

Form, formation, and readjustment of contract, Title 30, ch. 2, part 2.

General obligation and construction of contract — U.C.C., Title 30, ch. 2, part 3.

Requirements of retail installment contracts, 31-1-231.

Minors — power to contract, Title 41, ch. 1, part 3.

**28-2-103. Express versus implied contracts.** A contract is either express or implied. An express contract is one the terms of which are stated in words. An implied contract is one the existence and terms of which are manifested by conduct.

**History: En. Secs. 2180, 2181, 2182, Civ. C. 1895; re-en. Secs. 5012, 5013, 5014, Rev. C. 1907; re-en. Secs. 7514, 7515, 7516, R.C.M. 1921; Cal. Civ. C. Secs. 1619, 1620, 1621; Field Civ. C. Secs. 789, 790, 791; re-en. Secs. 7514, 7515, 7516, R.C.M. 1935; R.C.M. 1947, 13-601, 13-602, 13-603.**

**Cross-References**

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.

General definitions — U.C.C. — "contract", 30-1-201.

Formation in general — U.C.C. contracts, 30-2-204.

U.C.C. — sales contracts — course of performance or practical construction, 30-2-208.

**28-2-104. Executed versus executory contracts.** An executed contract is one the object of which is fully performed. All others are executory.

**History: En. Sec. 2226, Civ. C. 1895; re-en. Sec. 5050, Rev. C. 1907; re-en. Sec. 7552, R.C.M. 1921; Cal. Civ. C. Sec. 1661; Field Civ. C. Sec. 826; re-en. Sec. 7552, R.C.M. 1935; R.C.M. 1947, 13-727.**

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## Part 2
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**Part Cross-References**

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General obligations of parties — U.C.C. contracts, 30-2-301.

Contracts of marriage — parts of code not applicable, 40-1-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Discrimination in credit transactions, 49-2-403.

**28-2-201. Who may contract.** All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. Minors and persons of unsound mind have only such capacity as is defined by this part, 28-10-104, and Title 41, chapter 1.

**History: En. Secs. 2100, 2101, Civ. C. 1895; re-en. Secs. 4967, 4968, Rev. C. 1907; re-en. Secs. 7469, 7470, R.C.M. 1921; Cal. Civ. C. Secs. 1556, 1557; Field Civ. C. Secs. 746, 747; re-en. Secs. 7469, 7470, R.C.M. 1935; R.C.M. 1947, 13-201, 13-202; amd. Sec. 12, Ch. 117, L. 1979.**

**Cross-References**

County contracts, Title 7, ch. 5, part 23.

Municipal contracts, Title 7, ch. 5, part 43.

Public Contracts, Title 18.

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Reclamation contracts by Board of Land Commissioners, 82-4-239, 82-4-403.
Department of Commerce — contracts for planning and economic development programs, 90-1-107.

**28-2-202. Contracts of persons entirely without understanding.** A person entirely without understanding has no power to make a contract of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family.

**History:** **En. Sec. 21, Civ. C. 1895; re-en. Sec. 3595, Rev. C. 1907; re-en. Sec. 5683, R.C.M. 1921; Cal. Civ. C. Sec. 38; re-en. Sec. 5683, R.C.M. 1935; re-en. Sec. 5683, R.C.M. 1935; R.C.M. 1947, 64-110; amd. Sec. 769, Ch. 56, L. 2009.**

**Cross-References**
How proposal revoked — mental illness, 28-2-512.
Support of spouse, 40-2-103.
Minor cannot disaffirm contract for necessaries, 41-1-305.
Specific limits on justification for discrimination — age or mental handicap, 49-2-403.
Mentally ill, Title 53, ch. 21.

**28-2-203. Contracts of persons with limited understanding.** A conveyance or other contract of a person of unsound mind but not entirely without understanding, made before the person's incapacity has been judicially determined, is subject to rescission as provided in part 17 of this chapter.

**History:** **En. Sec. 22, Civ. C. 1895; re-en. Sec. 3596, Rev. C. 1907; re-en. Sec. 5684, R.C.M. 1921; Cal. Civ. C. Sec. 39; Field Civ. C. Sec. 21; re-en. Sec. 5684, R.C.M. 1935; R.C.M. 1947, 64-111; amd. Sec. 770, Ch. 56, L. 2009.**

**Cross-References**
How proposal revoked — mental illness, 28-2-512.
Rescission of contracts, Title 28, ch. 2, part 17.
U.C.C. — sales — modification, rescission, and waiver, 30-2-209.
Specific limits on justification for discrimination — age or mental handicap, 49-2-403.
Mentally ill, Title 53, ch. 21.

**28-2-204. When person of unsound mind cannot disaffirm contract.** A person of unsound mind cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for the person's support or that of the person's family, entered into by the person when not under the care of a parent or guardian able to provide for the person or the person's family.

**History:** **En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part); amd. Sec. 771, Ch. 56, L. 2009.**

**Cross-References**
How proposal revoked — mental illness, 28-2-512.
When party may rescind, 28-2-1711.
Support of spouse, 40-2-103.
Liability for acts or debts of spouse, 40-2-106.
Minor cannot disaffirm contract for necessaries, 41-1-305.
Specific limits on justification for discrimination — age or mental handicap, 49-2-403.
Mentally ill, Title 53, ch. 21.

**28-2-205. When contract for benefit of third person may be enforced by third person.** A contract made expressly for the benefit of a third person may be enforced by the third person at any time before the parties to the contract rescind the contract.

**History: En. Sec. 2103, Civ. C. 1895; re-en. Sec. 4970, Rev. C. 1907; re-en. Sec. 7472, R.C.M. 1921; Cal. Civ. C. Sec. 1559; Field Civ. C. Sec. 749; re-en. Sec. 7472, R.C.M. 1935; R.C.M. 1947, 13-204; amd. Sec. 772, Ch. 56, L. 2009.**

**Cross-References**

Rescission, Title 28, ch. 2, part 17.
U.C.C. — sales — modification, rescission, and waiver, 30-2-209.
Delegation of performance — assignment of rights, 30-2-210.

**28-2-206. Assignment of nonnegotiable written contract.** A nonnegotiable written contract for the payment of money or the delivery of personal property may be transferred by endorsement the same as a negotiable instrument. The endorsement transfers all the rights of the assignor under the contract to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the endorsement or arising before notice of the assignment is received by the maker.

**History: En. Sec. 1982, Civ. C. 1895; re-en. Sec. 4913, Rev. C. 1907; re-en. Sec. 7415, R.C.M. 1921; Cal. Civ. C. Sec. 1459; re-en. Sec. 7415, R.C.M. 1935; R.C.M. 1947, 58-303; amd. Sec. 13, Ch. 117, L. 1979; amd. Sec. 773, Ch. 56, L. 2009.**

**Cross-References**

Survival of cause of action or defense — death or disability or transfer of interest, 27-1-501.
Survival of counterclaim — death or assignment, 27-1-502.
What defenses to action survive assignment of right to action, 27-1-503.
Delegation of performance — assignment of rights, 30-2-210.
U.C.C. — negotiable instruments — transfer and negotiation, Title 30, ch. 3, part 2.
Exemption from execution of proceeds of annuity contracts — assignability of rights, 33-15-514.

## Part 3
## Consent in General

**28-2-301. Essential characteristics of consent.** The consent of the parties to a contract must be:

(1) free;
(2) mutual; and
(3) communicated by each to the other.

**History: En. Sec. 2110, Civ. C. 1895; re-en. Sec. 4971, Rev. C. 1907; re-en. Sec. 7473, R.C.M. 1921; Cal. Civ. C. Sec. 1565; Field Civ. C. Sec. 750; re-en. Sec. 7473, R.C.M. 1935; R.C.M. 1947, 13-301.**

**Cross-References**

How novation accomplished, 28-1-1503.
Formation in general — U.C.C. sales, 30-2-204.

**28-2-302. Effect of consent which is not free.** A consent which is not free is nevertheless not absolutely void but may be rescinded by the parties in the manner prescribed by part 17 of this chapter.

**History: En. Sec. 2111, Civ. C. 1895; re-en. Sec. 4972, Rev. C. 1907; re-en. Sec. 7474, R.C.M. 1921; Cal. Civ. C. Sec. 1566; Field Civ. C. Sec. 751; re-en. Sec. 7474, R.C.M. 1935; R.C.M. 1947, 13-302.**

**Cross-References**

When party may rescind, 28-2-1711.
U.C.C. — sales — modification, rescission, and waiver, 30-2-209.

**28-2-303. When consent is mutual.** Consent is not mutual unless the parties all agree upon the same thing in the same sense, but in certain cases defined by chapter 3, they are to be deemed so to agree without regard to the fact.

**History: En. Sec. 2125, Civ. C. 1895; re-en. Sec. 4986, Rev. C. 1907; re-en. Sec. 7488, R.C.M. 1921; Cal. Civ. C. Sec. 1580; Field Civ. C. Sec. 765; re-en. Sec. 7488, R.C.M. 1935; R.C.M. 1947, 13-316.**

**Cross-References**

Offer and acceptance in formation of contract, 30-2-206.

**28-2-304. Ratification of contract void for want of consent.** A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

**History: En. Sec. 2133, Civ. C. 1895; re-en. Sec. 4994, Rev. C. 1907; re-en. Sec. 7496, R.C.M. 1921; Cal. Civ. C. Sec. 1588; Field Civ. C. Sec. 773; re-en. Sec. 7496, R.C.M. 1935; R.C.M. 1947, 13-324.**

**Cross-References**

Essential elements of contract, 28-2-102.
Agency — ratification, 28-10-211 through 28-10-215.

## Part 4

## Circumstances Which Affect Validity of Apparent Consent

**Part Cross-References**

Parties who cannot be compelled to perform, 27-1-415.

**28-2-401. When apparent consent not free.** (1) An apparent consent is not real or free when obtained through:

(a) duress;
(b) menace;
(c) fraud;
(d) undue influence; or
(e) mistake.

(2) Consent is deemed to have been obtained through one of the causes mentioned in subsection (1) only when it would not have been given had such cause not existed.

**History: En. Secs. 2112, 2113, Civ. C. 1895; re-en. Secs. 4973, 4974, Rev. C. 1907; re-en. Secs. 7475, 7476, R.C.M. 1921; Cal. Civ. C. Secs. 1567, 1568; Field Civ. C. Secs. 752, 753; re-en. Secs. 7475, 7476, R.C.M. 1935; R.C.M. 1947, 13-303, 13-304.**

**28-2-402. What constitutes duress.** Duress consists in:

(1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
(2) unlawful detention of the property of any such person; or
(3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

**History: En. Sec. 2114, Civ. C. 1895; re-en. Sec. 4975, Rev. C. 1907; re-en. Sec. 7477, R.C.M. 1921; Cal. Civ. C. Sec. 1569; Field Civ. C. Sec. 754; re-en. Sec. 7477, R.C.M. 1935; R.C.M. 1947, 13-305.**

**Cross-References**

When party may rescind, 28-2-1711.
Burdens in contested will cases, 72-3-310.

**28-2-403. What constitutes menace.** Menace consists in a threat of:

(1) such duress as is specified in subsections (1) and (3) of 28-2-402;
(2) unlawful and violent injury to the person or property of any such person in circumstances described in 28-2-402; or
(3) injury to the character of any such person.

**History: En. Sec. 2115, Civ. C. 1895; re-en. Sec. 4976, Rev. C. 1907; re-en. Sec. 7478, R.C.M. 1921; Cal. Civ. C. Sec. 1570; Field Civ. C. Sec. 755; re-en. Sec. 7478, R.C.M. 1935; R.C.M. 1947, 13-306; amd. Sec. 14, Ch. 117, L. 1979.**

**Cross-References**

Libel and slander, Title 27, ch. 1, part 8.
When party may rescind, 28-2-1711.

**28-2-404. Kinds of fraud.** Fraud is either actual or constructive. Actual fraud is always a question of fact.

**History: En. Secs. 2116, 2119, Civ. C. 1895; re-en. Secs. 4977, 4980, Rev. C. 1907; re-en. Secs. 7479, 7482, R.C.M. 1921; Cal. Civ. C. Secs. 1571, 1574; Field Civ. C. Secs. 756, 759; re-en. Secs. 7479, 7482, R.C.M. 1935; R.C.M. 1947, 13-307, 13-310.**

**Cross-References**

Issues of fact, 25-7-101, 25-7-103.
Right to damages for fraud preserved, 27-1-602.
Liability for damages for deceit, 27-1-712.
Action for relief on ground of fraud or mistake, 27-2-203.
When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.
Remedies for fraud, 30-2-721.
Fraudulent financing of mining and oil companies, Title 30, ch. 14, part 7.
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.

**28-2-405. What constitutes actual fraud.** Actual fraud, within the meaning of this part, consists in any of the following acts committed by a party to the contract or with the party's connivance with intent to deceive another party to the contract or to induce the other party to enter into the contract:

(1) the suggestion as a fact of that which is not true by one who does not believe it to be true;

(2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though the person believes it to be true;

(3) the suppression of that which is true by one having knowledge or belief of the fact;

(4) a promise made without any intention of performing it; or

(5) any other act fitted to deceive.

**History: En. Sec. 2117, Civ. C. 1895; re-en. Sec. 4978, Rev. C. 1907; re-en. Sec. 7480, R.C.M. 1921; Cal. Civ. C. Sec. 1572; Field Civ. C. Sec. 757; re-en. Sec. 7480, R.C.M. 1935; R.C.M. 1947, 13-308; amd. Sec. 774, Ch. 56, L. 2009.**

**Cross-References**

When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.
Fraudulent conveyances, Title 31, ch. 2, part 3.

**28-2-406. What constitutes constructive fraud.** Constructive fraud consists of:

(1) any breach of duty that, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under the person in fault by misleading another person to that person's prejudice or to the prejudice of anyone claiming under that person; or

(2) any act or omission that the law especially declares to be fraudulent, without respect to actual fraud.

**History: En. Sec. 2118, Civ. C. 1895; re-en. Sec. 4979, Rev. C. 1907; re-en. Sec. 7481, R.C.M. 1921; Cal. Civ. C. Sec. 1573; Field Civ. C. Sec. 758; re-en. Sec. 7481, R.C.M. 1935; R.C.M. 1947, 13-309; amd. Sec. 775, Ch. 56, L. 2009.**

**Cross-References**

When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.
Fraudulent conveyances, Title 31, ch. 2, part 3.

**28-2-407. What constitutes undue influence.** Undue influence consists of:

(1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;

(2) taking an unfair advantage of another person's weakness of mind; or

(3) taking a grossly oppressive and unfair advantage of another person's necessities or distress.

**History: En. Sec. 2120, Civ. C. 1895; re-en. Sec. 4981, Rev. C. 1907; re-en. Sec. 7483, R.C.M. 1921; Cal. Civ. C. Sec. 1575; Field Civ. C. Sec. 760; re-en. Sec. 7483, R.C.M. 1935; R.C.M. 1947, 13-311; amd. Sec. 776, Ch. 56, L. 2009.**

**Cross-References**

Undue influence of voters, 13-35-218.
Illegal election practices — undue influence, 13-36-210.
When party may rescind, 28-2-1711.
Self-proved will — no undue influence, 72-2-524.
Burden in contested will cases, 72-3-310.

**28-2-408. Kinds of mistake.** Mistake may be either of fact or law.

**History: En. Sec. 2121, Civ. C. 1895; re-en. Sec. 4982, Rev. C. 1907; re-en. Sec. 7484, R.C.M. 1921; Cal. Civ. C. Sec. 1576; Field Civ. C. Sec. 761; re-en. Sec. 7484, R.C.M. 1935; R.C.M. 1947, 13-312.**

**Cross-References**

Actions for relief on ground of fraud or mistake, 27-2-203.

**28-2-409. What constitutes mistake of fact.** Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

(1) an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or

(2) belief in the present existence of a thing material to the contract which does not exist or in the past existence of such a thing which has not existed.

**History:** **En. Sec. 2122, Civ. C. 1895; re-en. Sec. 4983, Rev. C. 1907; re-en. Sec. 7485, R.C.M. 1921; Cal. Civ. C. Sec. 1577; Field Civ. C. Sec. 762; re-en. Sec. 7485, R.C.M. 1935; R.C.M. 1947, 13-313.**

**Cross-References**

When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.

**28-2-410. What constitutes mistake of law.** Mistake of law constitutes a mistake, within the meaning of this part, only when it arises from:

(1) a misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or

(2) a misapprehension of the law by one party of which the others are aware at the time of contracting but which they do not rectify.

**History:** **En. Sec. 2123, Civ. C. 1895; re-en. Sec. 4984, Rev. C. 1907; re-en. Sec. 7486, R.C.M. 1921; Cal. Civ. C. Sec. 1578; Field Civ. C. Sec. 763; re-en. Sec. 7486, R.C.M. 1935; R.C.M. 1947, 13-314.**

**Cross-References**

Meaning of law, Title 1, ch. 1, part 1.
When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.

**28-2-411. Mistake of foreign laws — mistake of fact.** Mistake of foreign laws is a mistake of fact.

**History:** **En. Sec. 2124, Civ. C. 1895; re-en. Sec. 4985, Rev. C. 1907; re-en. Sec. 7487, R.C.M. 1921; Cal. Civ. C. Sec. 1579; Field Civ. C. Sec. 764; re-en. Sec. 7487, R.C.M. 1935; R.C.M. 1947, 13-315.**

**Cross-References**

When party may rescind, 28-2-1711.
When stipulation against rescission ineffective, 28-2-1712.

## Part 5
## Communication of Consent — Revocation of Proposal

**Part Cross-References**

Discrimination in credit transactions, 49-2-403.

**28-2-501. How consent is communicated.** (1) Consent can be communicated with effect only by some act or omission of the party contracting by which the party intends to communicate it or that necessarily tends to the communication.

(2) If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless the conditions are conformed to. However, in other cases, any reasonable and usual mode in conformity with subsection (1) may be adopted.

**History:** **En. Secs. 2126, 2127, Civ. C. 1895; re-en. Secs. 4987, 4988, Rev. C. 1907; re-en. Secs. 7489, 7490, R.C.M. 1921; Cal. Civ. C. Secs. 1581, 1582; Field Civ. C. Secs. 766, 767; re-en. Secs. 7489, 7490, R.C.M. 1935; R.C.M. 1947, 13-317, 13-318; amd. Sec. 15, Ch. 117, L. 1979; amd. Sec. 777, Ch. 56, L. 2009.**

**Cross-References**

Offer and acceptance in formation of contract, 30-2-206.

**28-2-502. When consent is considered fully communicated.** Consent is considered to be fully communicated between the parties as soon as the party accepting a proposal has put that party's acceptance in the course of transmission to the proposer in conformity with 28-2-501.

**History:** **En. Sec. 2128, Civ. C. 1895; re-en. Sec. 4989, Rev. C. 1907; re-en. Sec. 7491, R.C.M. 1921; Cal. Civ. C. Sec. 1583; Field Civ. C. Sec. 768; re-en. Sec. 7491, R.C.M. 1935; R.C.M. 1947, 13-319; amd. Sec. 16, Ch. 117, L. 1979; amd. Sec. 778, Ch. 56, L. 2009.**

**28-2-503. Implied acceptance.** (1) Performance of the conditions of a proposal or the acceptance of the consideration offered with a proposal is an acceptance of the proposal.

(2) A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known or ought to be known to the person accepting.

**History:** **En. Secs. 2129, 2134, Civ. C. 1895; re-en. Secs. 4990, 4995, Rev. C. 1907; re-en. Secs. 7492, 7497, R.C.M. 1921; Cal. Civ. C. Secs. 1584, 1589; Field Civ. C. Secs. 769, 774; re-en. Secs. 7492, 7497, R.C.M. 1935; R.C.M. 1947, 13-320, 13-325.**

**Cross-References**

Offer and acceptance in formation of contract, 30-2-206.

**28-2-504. Acceptance to be absolute.** An acceptance must be absolute and unqualified or must include in itself an acceptance of that character which the proposer can separate from the rest and which will bind the person accepting. A qualified acceptance is a new proposal.

**History: En. Sec. 2130, Civ. C. 1895; re-en. Sec. 4991, Rev. C. 1907; re-en. Sec. 7493, R.C.M. 1921; Cal. Civ. C. Sec. 1585; Field Civ. C. Sec. 770; re-en. Sec. 7493, R.C.M. 1935; R.C.M. 1947, 13-321; amd. Sec. 17, Ch. 117, L. 1979.**

**Cross-References**

Additional terms in acceptance or confirmation, 30-2-207.

**28-2-505 through 28-2-510 reserved.**

**28-2-511. When proposal may be revoked.** A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

**History: En. Sec. 2131, Civ. C. 1895; re-en. Sec. 4992, Rev. C. 1907; re-en. Sec. 7494, R.C.M. 1921; Cal. Civ. C. Sec. 1586; Field Civ. C. Sec. 771; re-en. Sec. 7494, R.C.M. 1935; R.C.M. 1947, 13-322.**

**Cross-References**

Modification, rescission, and waiver, 30-2-209.

**28-2-512. How proposal revoked.** A proposal is revoked by:

(1) the communication of notice of revocation by the proposer to the other party in the manner prescribed by 28-2-501 and 28-2-502 before the other party's acceptance has been communicated to the proposer;

(2) the lapse of the time prescribed in the proposal for its acceptance or, if no time is prescribed, the lapse of a reasonable time without communication of the acceptance;

(3) the failure of the acceptor to fulfill a condition precedent to acceptance; or

(4) the death or serious mental illness of the proposer.

**History: En. Sec. 2132, Civ. C. 1895; re-en. Sec. 4993, Rev. C. 1907; re-en. Sec. 7495, R.C.M. 1921; Cal. Civ. C. Sec. 1587; Field Civ. C. Sec. 772; re-en. Sec. 7495, R.C.M. 1935; R.C.M. 1947, 13-323; amd. Sec. 18, Ch. 117, L. 1979; amd. Sec. 779, Ch. 56, L. 2009.**

**Cross-References**

When offer may be conditional, 28-1-1211.
Who may contract, 28-2-201.
Contracts of persons entirely without understanding, 28-2-202.
Contracts of persons with limited understanding, 28-2-203.
When person of unsound mind cannot disaffirm contract, 28-2-204.

## Part 6
## Object of a Contract

**Part Cross-References**

Agreements for payment of federal sums in lieu of taxes, Title 17, ch. 3, part 3.
Contract for city-county library, 22-1-315, 22-1-316.
What may be subject of contract, 30-11-107.

**28-2-601. Object of contract defined.** The object of a contract is the thing which it is agreed on the part of the party receiving the consideration to do or not to do.

**History: En. Sec. 2150, Civ. C. 1895; re-en. Sec. 4996, Rev. C. 1907; re-en. Sec. 7498, R.C.M. 1921; Cal. Civ. C. Sec. 1595; Field Civ. C. Sec. 775; re-en. Sec. 7498, R.C.M. 1935; R.C.M. 1947, 13-401.**

**Cross-References**

Contract defined, 28-2-101.
Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.
Definition of contract — U.C.C., 30-1-201.
Firm offers, 30-2-205.

**28-2-602. Essential characteristics of object.** The object of the contract must be lawful when the contract is made and possible and ascertainable by the time the contract is to be performed. Everything is deemed possible except that which is impossible in the nature of things.

**History: En. Secs. 2151, 2152, Civ. C. 1895; re-en. Secs. 4997, 4998, Rev. C. 1907; re-en. Secs. 7499, 7500, R.C.M. 1921; Cal. Civ. C. Secs. 1596, 1597; Field Civ. C. Secs. 776, 777; re-en. Secs. 7499, 7500, R.C.M. 1935; R.C.M. 1947, 13-402, 13-403.**

**Cross-References**

Prevention of performance, Title 28, ch. 1, part 13.
What is unlawful, 28-2-701.

**28-2-603. When contract wholly void.** Where a contract has but a single object and such object is unlawful, whether in whole or in part, or wholly impossible of performance or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

**History: En. Sec. 2153, Civ. C. 1895; re-en. Sec. 4999, Rev. C. 1907; re-en. Sec. 7501, R.C.M. 1921; Cal. Civ. C. Sec. 1598; Field Civ. C. Sec. 778; re-en. Sec. 7501, R.C.M. 1935; R.C.M. 1947, 13-404.**

**Cross-References**

Regulation of cigarette marketing — illegal contracts, 16-10-302.
Effect of impossibility of designated exclusive method of determination, 28-2-814.
Unconscionable contract or clause, 30-2-302.
Contract discharging employer liability for negligence void, 39-2-705.
Prohibited provisions in rental agreements, 70-24-202.

**28-2-604. When contract partially void.** Where a contract has several distinct objects of which one at least is lawful and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

**History: En. Sec. 2154, Civ. C. 1895; re-en. Sec. 5000, Rev. C. 1907; re-en. Sec. 7502, R.C.M. 1921; Cal. Civ. C. Sec. 1599; Field Civ. C. Sec. 779; re-en. Sec. 7502, R.C.M. 1935; R.C.M. 1947, 13-405.**

**Cross-References**

Unconscionable contract or clause, 30-2-302.

## Part 7

## Illegal Objects and Provisions

**Part Cross-References**

Community college district trustees — no pecuniary interest in letting contracts, 20-15-104.
Parties who cannot be compelled to specifically perform, 27-1-415.
Cause of action for breach of promise abolished — right to damages for fraud and unjust enrichment preserved, 27-1-602.
Agreements settling or compromising abolished causes of action, 27-1-605.
Unconscionable contract or clause, 30-2-302.
Recovery on illegal contracts forbidden, 30-14-219.
Prohibited provisions in rental agreements, 70-24-202.
Certain contracts void, 71-3-109.

**28-2-701. What is unlawful.** That is not lawful which is:

(1) contrary to an express provision of law;
(2) contrary to the policy of express law, though not expressly prohibited; or
(3) otherwise contrary to good morals.

**History: En. Sec. 2240, Civ. C. 1895; re-en. Sec. 5051, Rev. C. 1907; re-en. Sec. 7553, R.C.M. 1921; Cal. Civ. C. Sec. 1667; Field Civ. C. Sec. 827; re-en. Sec. 7553, R.C.M. 1935; R.C.M. 1947, 13-801.**

**Cross-References**

Object of contract defined, 28-2-601.
Consideration to be lawful — effect of illegality, 28-2-803.

**28-2-702. Contracts that violate policy of law — exemption from responsibility — exception.** Except as provided in 27-1-753, all contracts that have for their object, directly or indirectly, to exempt anyone from responsibility for the person's own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent, are against the policy of the law.

**History: En. Sec. 2241, Civ. C. 1895; re-en. Sec. 5052, Rev. C. 1907; re-en. Sec. 7554, R.C.M. 1921; Cal. Civ. C. Sec. 1668; Field Civ. C. Sec. 828; re-en. Sec. 7554, R.C.M. 1935; R.C.M. 1947, 13-802; amd. Sec. 780, Ch. 56, L. 2009; amd. Sec. 2, Ch. 410, L. 2015.**

**Cross-References**

Liability for negligence as well as willful acts, 27-1-701.
U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.
Contract discharging employer liability for negligence void, 39-2-705.
Wage protection — contracts in violation of part void, 39-3-208.
Prohibited provisions in rental agreements, 70-24-202.

**28-2-703. Contracts in restraint of trade generally void.** Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided for by 28-2-704 or 28-2-705, is to that extent void.

**History: En. Sec. 2246, Civ. C. 1895; re-en. Sec. 5057, Rev. C. 1907; re-en. Sec. 7559, R.C.M. 1921; Cal. Civ. C. Sec. 1673; Field Civ. C. Sec. 833; re-en. Sec. 7559, R.C.M. 1935; R.C.M. 1947, 13-807.**

**Cross-References**

Special corporate privileges — franchises or immunities prohibited, Art. II, sec. 31, Mont. Const.
Unlawful practices — trade, 30-14-103.
Unlawful restraint of trade, 30-14-205.
Recovery on illegal contracts forbidden, 30-14-219.
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.

**28-2-704. Exception — sale of goodwill of business.** (1) A person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within the areas provided in subsection (2) so long as the buyer or any person deriving title to the goodwill from the buyer carries on a like business in the described areas.

(2) The agreement authorized in subsection (1) may apply in:
(a) the city where the principal office of the business is located;
(b) the county where the principal office of the business is located;
(c) a city in any county adjacent to the county in which the principal office of the business is located;
(d) any county adjacent to the county in which the principal office of the business is located; or
(e) any combination of the areas in subsections (2)(a) through (2)(d).

**History: En. Sec. 2247, Civ. C. 1895; re-en. Sec. 5058, Rev. C. 1907; re-en. Sec. 7560, R.C.M. 1921; Cal. Civ. C. Sec. 1674; Field Civ. C. Sec. 834; re-en. Sec. 7560, R.C.M. 1935; R.C.M. 1947, 13-808; amd. Sec. 1, Ch. 432, L. 1983; amd. Sec. 781, Ch. 56, L. 2009.**

**Cross-References**

Warranty on sale of goodwill, 30-11-221.
Rules for determining existence of partnership — no inference from receipt from sale of goodwill, 35-10-202.

**28-2-705. Exception — dissolution of partnership.** Partners may, upon dissolution of the partnership, agree that one or more of them may not carry on a similar business within the areas provided in 28-2-704(2).

**History: En. Sec. 2248, Civ. C. 1895; re-en. Sec. 5059, Rev. C. 1907; re-en. Sec. 7561, R.C.M. 1921; Cal. Civ. C. Sec. 1675; Field Civ. C. Sec. 835; re-en. Sec. 7561, R.C.M. 1935; R.C.M. 1947, 13-809; amd. Sec. 2, Ch. 432, L. 1983.**

**Cross-References**

Rules for determining existence of partnership — no inference from receipt from sale of goodwill, 35-10-202.
Dissolution and winding up of partnership, Title 35, ch. 10, part 6.

**28-2-706. Contracts in restraint of marriage generally void.** Every contract in restraint of the marriage of any person other than a minor is void.

**History: En. Sec. 2249, Civ. C. 1895; re-en. Sec. 5060, Rev. C. 1907; re-en. Sec. 7562, R.C.M. 1921; Cal. Civ. C. Sec. 1676; Field Civ. C. Sec. 836; re-en. Sec. 7562, R.C.M. 1935; R.C.M. 1947, 13-810.**

**Cross-References**

Obligations that cannot be specifically enforced, 27-1-412.
Marriage, Title 40, ch. 1.

**28-2-707. What conditions void.** A condition in a contract the fulfillment of which is impossible or unlawful within the meaning of part 6 and this part or which is repugnant to the nature of the interest created by the contract is void.

**History: En. Sec. 1957, Civ. C. 1895; re-en. Sec. 4905, Rev. C. 1907; re-en. Sec. 7407, R.C.M. 1921; Cal. Civ. C. Sec. 1441; Field Civ. C. Sec. 683; re-en. Sec. 7407, R.C.M. 1935; R.C.M. 1947, 58-211; amd. Sec. 19, Ch. 117, L. 1979.**

**Cross-References**

Parties who cannot be compelled to specifically perform, 27-1-415.
What considered impossibility in contract, 28-2-602.
Unconscionable contract or clause, 30-2-302.

**28-2-708. Restraints upon legal proceedings void.** Every stipulation or condition in a contract by which any party to the contract is restricted from enforcing the party's rights under the contract by the usual proceedings in the ordinary tribunals or that limits the time within which the party may enforce the party's rights is void. This section does not affect the validity of an agreement enforceable under Title 27, chapter 5.

**History: En. Sec. 2245, Civ. C. 1895; re-en. Sec. 5056, Rev. C. 1907; re-en. Sec. 7558, R.C.M. 1921; Field Civ. C. Sec. 832; re-en. Sec. 7558, R.C.M. 1935; R.C.M. 1947, 13-806; amd. Sec. 24, Ch. 684, L. 1985; amd. Sec. 782, Ch. 56, L. 2009.**

**Cross-References**

Obligations that cannot be specifically enforced, 27-1-412.
Arbitration, Title 27, ch. 5.
U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

**28-2-709. Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default.** (1) A contract in writing by which any promise to pay money is created may not contain any provision either empowering any person to enter judgment by confession against any party to the contract or empowering any person as the agent of any party to the contract to either confess judgment, accept service of process, or consent on behalf of the party to the entry of the party's default in any proceeding in court upon the contract. The described provision in a contract is illegal and void and is unenforceable in the courts of this state against any party to the contract.

(2) The term "contract", as used in this section, includes all writings executed contemporaneously with and constituting a part of the same transaction, whether the writings are negotiable or nonnegotiable in form.

**History: En. Sec. 1, Ch. 197, L. 1935; re-en. Sec. 7562.1, R.C.M. 1935; R.C.M. 1947, 13-811; amd. Sec. 783, Ch. 56, L. 2009.**

**Cross-References**

When and in what courts judgment may be confessed, 27-9-101.
What acts agent may perform, 28-10-105.
Delegation of performance — assignment of rights, 30-2-210.
Definition of retail installment contract, 31-1-202.

**28-2-710. Compromise and settlement of civil claims — negotiation.** (1) Except as provided in subsection (2), a party in a settlement negotiation may not demand, as a condition of settlement, that the settlement proceeds are classified as a specific category of damage that does not accurately describe the specific damages at issue.

(2) The parties may stipulate that any damages may be classified as any category of damages. The stipulation must be included in the settlement agreement.

**History: En. Sec. 1, Ch. 273, L. 2023.**

**Cross-References**

Damages — breach of contract, 27-1-311.
Liquidation or limitation of damages — deposits, 30-2-718.
Contractual modification or limitation of remedy, 30-2-719.

**28-2-711 through 28-2-720 reserved.**

**28-2-721. When provision fixing liquidated damages valid.** (1) Every contract by which the amount of damage to be paid or other compensation to be made for a breach of an obligation is determined in anticipation thereof is to that extent void, except as expressly provided in subsection (2).

(2) The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

**History: En. Secs. 2243, 2244, Civ. C. 1895; re-en. Secs. 5054, 5055, Rev. C. 1907; re-en. Secs. 7556, 7557, R.C.M. 1921; Cal. Civ. C. Secs. 1670, 1671; Field Civ. C. Secs. 830, 831; re-en. Secs. 7556, 7557, R.C.M. 1935; R.C.M. 1947, 13-804, 13-805.**

**Cross-References**

Damages — breach of contract, 27-1-311.
Liquidation or limitation of damages — deposits, 30-2-718.
Contractual modification or limitation of remedy, 30-2-719.

**28-2-722. Repealed.** Sec. 1, Ch. 166, L. 2005.

**History: En. Sec. 2675, Civ. C. 1895; re-en. Sec. 5258, Rev. C. 1907; re-en. Sec. 7773, R.C.M. 1921; Cal. Civ. C. Sec. 1980; Field Civ. C. Sec. 1013; re-en. Sec. 7773, R.C.M. 1935; R.C.M. 1947, 41-206; amd. Sec. 20, Ch. 117, L. 1979.**

**28-2-723. Construction contracts requiring lien or bond waiver void.** A construction contract may not contain provisions requiring a contractor, subcontractor, or material supplier to waive the right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid for the labor, materials, or both labor and materials, furnished by the contractor, subcontractor, or material supplier.

**History: En. Sec. 1, Ch. 119, L. 1999.**

**28-2-724. Prohibition of contracts that restrict practice — applicability — exceptions.** (1) A contract that creates or establishes the terms of employment, a partnership, or any other form of professional relationship with a health care provider described in subsection (2) may not restrict the right of the health care provider, after the termination of the employment, partnership, or other form of professional relationship, to:

(a) practice or provide services for which the provider is licensed, in any geographic area and for any period;

(b) treat, advise, consult with, or establish a provider-patient relationship with any current patient of the employer or with a patient affiliated with a partnership or other form of professional relationship; or

(c) solicit or seek to establish a provider-patient relationship with any current patient of the employer or with a patient affiliated with a partnership or other form of professional relationship.

(2) The requirements of subsection (1) apply to contracts or agreements involving the following health care providers:

(a) a physician licensed under Title 37, chapter 3;

(b) a psychologist licensed under Title 37, chapter 17;

(c) a naturopathic physician licensed under Title 37, chapter 26;

(d) a social worker licensed under Title 37, chapter 39;

(e) a professional counselor licensed under Title 37, chapter 39;

(f) an addiction counselor licensed under Title 37, chapter 39;

(g) a marriage and family therapist licensed under Title 37, chapter 39;

(h) a behavioral health peer support specialist licensed under Title 37, chapter 39;

(i) a registered professional nurse or an advanced practice registered nurse licensed under Title 37, chapter 8; or

(j) a physician assistant licensed under Title 37, chapter 20.

(3) This section does not apply to a contract in connection with the sale and purchase of a practice or to a provision for repayment of all or a portion of money paid or advanced to a physician licensed under Title 37, chapter 3, that is subject to a payback provision that decreases over time, including but not limited to a bona fide loan, relocation cost, signing bonus, education expense, and tuition repayment expense.

**History:** **En. Sec. 1, Ch. 479, L. 2023; amd. Sec. 1, Ch. 104, L. 2025; amd. Sec. 1, Ch. 131, L. 2025; amd. Sec. 1, Ch. 698, L. 2025.**

**Compiler's Comments**

*2025 Amendments — Composite Section:* See 2025 Session Law for amendment made by sec. 1, Ch. 104, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 131, L. 2025. Amendment effective April 16, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 698, L. 2025. Amendment effective January 1, 2026.

*Applicability:* Section 3, Ch. 131, L. 2025, provided: "[This act] applies to contracts made or renewed on or after [the effective date of this act]." Effective April 16, 2025.

Section 3, Ch. 698, L. 2025, provided: "[This act] applies to contracts made or renewed on or after January 1, 2026."

## Part 8
## Consideration

**28-2-801. What constitutes good consideration.** Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by the person, other than prejudice that the person is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise.

**History:** **En. Sec. 2160, Civ. C. 1895; re-en. Sec. 5001, Rev. C. 1907; re-en. Sec. 7503, R.C.M. 1921; Cal. Civ. C. Sec. 1605; Field Civ. C. Sec. 780; re-en. Sec. 7503, R.C.M. 1935; R.C.M. 1947, 13-501; amd. Sec. 784, Ch. 56, L. 2009.**

**Cross-References**

Parties who cannot be compelled to perform, 27-1-415.

Essential elements of contract, 28-2-102.

U.C.C. — sales — formation of contract in general, 30-2-204.

U.C.C. — sales — offer and acceptance in formation of contract, 30-2-206.

**28-2-802. Extent to which existing legal or moral obligation is good consideration.** An existing legal obligation resting upon the promisor, a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee is also a good consideration for a promise to an extent corresponding with the extent of the obligation, but no further or otherwise.

**History: En. Sec. 2161, Civ. C. 1895; re-en. Sec. 5002, Rev. C. 1907; re-en. Sec. 7504, R.C.M. 1921; Cal. Civ. C. Sec. 1606; Field Civ. C. Sec. 781; re-en. Sec. 7504, R.C.M. 1935; R.C.M. 1947, 13-502.**

**Cross-References**

How obligations arise, 28-1-102.

Liability for acts or debts of spouse, 40-2-106.

Minor cannot disaffirm contract for necessaries, 41-1-305.

**28-2-803. Consideration to be lawful — effect of illegality.** The consideration of a contract must be lawful within the meaning of 28-2-701. If any part of a single consideration for one or more objects or of several considerations for a single object is unlawful, the entire contract is void.

**History: En. Secs. 2162, 2163, Civ. C. 1895; re-en. Secs. 5003, 5004, Rev. C. 1907; re-en. Secs. 7505, 7506, R.C.M. 1921; Cal. Civ. C. Secs. 1607, 1608; Field Civ. C. Secs. 782, 783; re-en. Sec. 7505, 7506, R.C.M. 1935; R.C.M. 1947, 13-503, 13-504.**

**Cross-References**

What is unlawful, 28-2-701.

**28-2-804. Written instrument presumptive evidence of consideration.** A written instrument is presumptive evidence of a consideration.

**History: En. Sec. 2169, Civ. C. 1895; re-en. Sec. 5010, Rev. C. 1907; re-en. Sec. 7512, R.C.M. 1921; Cal. Civ. C. Sec. 1614; re-en. Sec. 7512, R.C.M. 1935; R.C.M. 1947, 13-510.**

**Cross-References**

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

Formal requirements — statute of frauds, 30-2-201.

Final written expression — parol or extrinsic evidence, 30-2-202.

**28-2-805. Burden of proof of want of consideration.** The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

**History: En. Sec. 2170, Civ. C. 1895; re-en. Sec. 5011, Rev. C. 1907; re-en. Sec. 7513, R.C.M. 1921; Cal. Civ. C. Sec. 1615; re-en. Sec. 7513, R.C.M. 1935; R.C.M. 1947, 13-511.**

**Cross-References**

Who has burden of persuasion, 26-1-402.

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

**28-2-806 through 28-2-810 reserved.**

**28-2-811. Applicability of rules concerning object to executory consideration.** A consideration may be executed or executory, in whole or in part. Insofar as it is executory, it is subject to the provisions of part 6 of this chapter.

**History: En. Sec. 2164, Civ. C. 1895; re-en. Sec. 5005, Rev. C. 1907; re-en. Sec. 7507, R.C.M. 1921; Cal. Civ. C. Sec. 1609; Field Civ. C. Sec. 784; re-en. Sec. 7507, R.C.M. 1935; R.C.M. 1947, 13-505.**

**Cross-References**

Executed versus executory contracts, 28-2-104.

**28-2-812. How amount of executory consideration may be determined.** When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard.

**History: En. Sec. 2165, Civ. C. 1895; re-en. Sec. 5006, Rev. C. 1907; re-en. Sec. 7508, R.C.M. 1921; Cal. Civ. C. Sec. 1610; Field Civ. C. Sec. 785; re-en. Sec. 7508, R.C.M. 1935; R.C.M. 1947, 13-506.**

**Cross-References**

Presumption of consideration — conclusive or rebuttable, 26-1-601, 26-1-602.

**28-2-813. Determination by interested party.** When a contract does not determine the amount of the consideration or the method by which it is to be ascertained or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

**History: En. Sec. 2166, Civ. C. 1895; re-en. Sec. 5007, Rev. C. 1907; re-en. Sec. 7509, R.C.M. 1921; Cal. Civ. C. Sec. 1611; Field Civ. C. Sec. 786; re-en. Sec. 7509, R.C.M. 1935; R.C.M. 1947, 13-507.**

**28-2-814. Effect of impossibility of designated exclusive method of determination.** (1) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

(2) Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face but in fact is or becomes impossible of execution, such provision only is void.

**History: En. Secs. 2167, 2168, Civ. C. 1895; re-en. Secs. 5008, 5009, Rev. C. 1907; re-en. Secs. 7510, 7511, R.C.M. 1921; Cal. Civ. C. Secs. 1612, 1613; Field Civ. C. Secs. 787, 788; re-en. Secs. 7510, 7511, R.C.M. 1935; R.C.M. 1947, 13-508, 13-509.**

**Cross-References**

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Impossible conditions, 28-2-707.

## Part 9
## Written Contracts

**Part Cross-References**

Formal requirements — statute of frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.
Real property sales, 30-11-111.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.
Requirements of retail installment contracts, 31-1-231.

**28-2-901. When contracts may be oral.** All contracts may be oral except such as are specially required by statute to be in writing.

**History: En. Sec. 2183, Civ. C. 1895; re-en. Sec. 5015, Rev. C. 1907; re-en. Sec. 7517, R.C.M. 1921; Cal. Civ. C. Sec. 1622; Field Civ. C. Sec. 792; re-en. Sec. 7517, R.C.M. 1935; R.C.M. 1947, 13-604.**

**Cross-References**

When guaranty considered original obligation and need not be in writing, 28-11-105.

**28-2-902. Enforcement of contract not in writing through fraud.** Where a contract that is required by law to be in writing is prevented from being put into writing by the fraud of a party to the contract, any other party who is by the fraud led to believe that the contract is in writing and acts upon that belief to the party's prejudice may enforce it against the fraudulent party.

**History: En. Sec. 2184, Civ. C. 1895; re-en. Sec. 5016, Rev. C. 1907; re-en. Sec. 7518, R.C.M. 1921; Cal. Civ. C. Sec. 1623; Field Civ. C. Sec. 793; re-en. Sec. 7518, R.C.M. 1935; R.C.M. 1947, 13-605; amd. Sec. 785, Ch. 56, L. 2009.**

**Cross-References**

Fraud, 28-2-404 through 28-2-406.
U.C.C. — sales — remedies for fraud, 30-2-721.

**28-2-903. What contracts must be in writing.** (1) The following agreements are invalid unless the agreement or some note or memorandum of the agreement is in writing and subscribed by the party to be charged or the party's agent:

(a) an agreement that by its terms is not to be performed within a year from the making of the agreement;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest in real property. The agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission; or

(f) an agreement relating to a college athlete's student-athlete rights, as defined in 20-1-232, including but not limited to a student's name, image, and likeness.

(2) Evidence of an agreement described in subsections (1)(a) through (1)(f) is not admissible without the writing or secondary evidence of the writing's contents.

(3) Evidence is not admissible to charge a person upon a representation as to the credit of a third person unless the representation or some memorandum of the representation is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code.

**History: (1)Subds. a to c; en. Secs. 12 to 14, p. 494, Bannack Stat.; re-en. Secs. 12 to 14, pp. 393, 394, Cod. Stat. 1871; re-en. Secs. 166 to 168, 5th Div. Rev. Stat. 1879; re-en. Secs. 223 to 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. d; en. Sec. 8., p. 493, Bannack Stat.; re-en. Sec. 8, p. 393, Cod. Stat. 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; Subd. e; en. Sec. 2185, Civ. C. 1895; re-en. Sec. 5017, Rev. C. 1907; all subdivisions re-en. Sec. 7519, R.C.M. 1921; Cal. Civ. C. Sec. 1624; re-en. Sec. 7519, R.C.M. 1935; amd. Sec. 11-110, Ch. 264, L. 1963; Sec. 13-606, R.C.M. 1947; (2), (4)En. Sec. 3276, C. Civ. Proc. 1895; re-en. Sec. 7969, Rev. C. 1907; re-en. Sec. 10613, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1973; re-en. Sec. 10613, R.C.M. 1935; amd. Sec. 11-171, Ch. 264, L. 1963; Sec. 93-1401-7, R.C.M. 1947; (3)En. Sec. 3277, C. Civ. Proc. 1895; re-en. Sec. 7970, Rev. C. 1907; re-en. Sec. 10614, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1974; re-en. Sec. 10614, R.C.M. 1935; Sec. 93-1401-8, R.C.M. 1947; R.C.M. 1947, 13-606, 93-1401-7, 93-1401-8; amd. Sec. 21, Ch. 117, L. 1979; amd. Sec. 786, Ch. 56, L. 2009; amd. Sec. 2, Ch. 407, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 407, L. 2025. Amendment effective June 1, 2025.

**Cross-References**

Agency — when written authorization necessary, 28-10-203.
Guaranty generally to be in writing — form, 28-11-104.
Promise to answer for debt of another, 28-11-105.
Formal requirements — statute of frauds, 30-2-201.
U.C.C. — letters of credit, Title 30, ch. 5.
Contract for sale of real property — covenants, 30-11-109, 30-11-111.
Auctioneer's memorandum — sufficiency, 30-11-504.
Variation from legal interest rate, 31-1-106.
Retail installment contracts, 31-1-231.
Assignment for benefit of creditors, 31-2-210.
Insurance policy must contain entire contract, 33-15-302.
When contract in writing is binding on mining partnership, 35-13-201.
Marriage settlement contracts, 40-2-312.
Transfer to be in writing — statute of frauds, 70-20-101.
Notice to purchaser of property under contract for deed, 70-20-115.
Lease of city lot for over 75 years void, 70-26-110.
Power of attorney to execute mortgage, 71-1-102.
Mortgage of real property, Title 71, ch. 1, part 2.

**28-2-904. Effect of written contract on oral agreements.** The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

**History: En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R.C.M. 1921; Cal. Civ. C. Sec. 1625; Field Civ. C. Sec. 795; re-en. Sec. 7520, R.C.M. 1935; R.C.M. 1947, 13-607.**

**Cross-References**

Consideration of circumstances surrounding execution, 1-4-102.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-2-905. When extrinsic evidence concerning a written agreement may be considered.** (1) Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. Therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) when the validity of the agreement is the fact in dispute.

(2) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties.

**History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13; amd. Sec. 22, Ch. 117, L. 1979.**

**Cross-References**

Consideration of circumstances surrounding execution, 1-4-102.
Uncertainty to be resolved against party causing it, 28-3-206.
Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.
Reference to circumstances permissible, 28-3-402.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-2-906. When written contract takes effect.** A contract in writing takes effect upon its delivery to the party in whose favor it is made or to the party's agent.

**History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608; amd. Sec. 787, Ch. 56, L. 2009.**

**Cross-References**

Formation in general — U.C.C. — sales, 30-2-204.
Offer and acceptance in formation of contract, 30-2-206.

**28-2-907. Applicability of rules concerning transfers in general.** The provisions of Title 70, chapter 1, part 5, and 70-20-110 concerning the delivery of grants, absolute and conditional, apply to all written contracts.

**History: En. Sec. 2188, Civ. C. 1895; re-en. Sec. 5020, Rev. C. 1907; re-en. Sec. 7522, R.C.M. 1921; Cal. Civ. C. Sec. 1627; Field Civ. C. Sec. 797; re-en. Sec. 7522, R.C.M. 1935; R.C.M. 1947, 13-609.**

**Cross-References**

U.C.C. — sales — power to transfer, 30-2-403.
U.C.C. — sales — performance, Title 30, ch. 2, part 5.

## Parts 10 through 14 reserved

## Part 15
## Enforcement of Contracts

**Part Cross-References**

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Specific and preventive relief, Title 27, ch. 1, part 4.
Attachment of property, 27-18-101.
Effect of corporate merger on contract rights, 35-15-505.

**28-2-1501. When successive actions on same contract permitted.** Successive actions may be maintained upon the same contract or transaction whenever after the former action a new cause of action arises therefrom.

**History: En. Sec. 426, p. 130, Bannack Stat.; re-en. Sec. 496, p. 232, L. 1867; re-en. Sec. 20, p. 30, Cod. Stat. 1871; rep. Sec. 674, p. 215, L. 1877; re-en. Sec. 1893, C. Civ. Proc. 1895; re-en. Sec. 7186, Rev. C. 1907; re-en. Sec. 9819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1047; re-en. Sec. 9819, R.C.M. 1935; R.C.M. 1947, 93-8704.**

## Part 16
## Modification of Contracts

**Part Cross-References**

Specific and preventive relief, Title 27, ch. 1, part 4.
When final injunction may be granted to prevent breach of obligation, 27-19-102.
Modification, rescission, and waiver — U.C.C. — sales, 30-2-209.
Refinancing retail installment contract, 31-1-243.

**28-2-1601. Alteration of oral contract by parties.** A contract not in writing may be altered in any respect by consent of the parties in writing without a new consideration and is extinguished thereby to the extent of the new alteration.

**History: En. Sec. 2280, Civ. C. 1895; re-en. Sec. 5066, Rev. C. 1907; re-en. Sec. 7568, R.C.M. 1921; Cal. Civ. C. Sec. 1697; Based on Field Civ. C. Sec. 842; re-en. Sec. 7568, R.C.M. 1935; R.C.M. 1947, 13-906.**

**Cross-References**

When contracts may be oral, 28-2-901.
Course of dealing and usage of trade, 30-1-205.
Modification, rescission, and waiver, 30-2-209.

**28-2-1602. How written contract may be altered by parties.** A contract in writing may be altered by a contract in writing or by an executed oral agreement, and not otherwise.

**History: En. Sec. 2281, Civ. C. 1895; re-en. Sec. 5067, Rev. C. 1907; re-en. Sec. 7569, R.C.M. 1921; Cal. Civ. C. Sec. 1698; re-en. Sec. 7569, R.C.M. 1935; R.C.M. 1947, 13-907.**

**Cross-References**
Extinction of written contract by destruction or cancellation, 28-2-1702.
Course of dealing and usage of trade, 30-1-205.
Additional terms in acceptance or confirmation, 30-2-207.
Course of performance or practical construction, 30-2-208.
Modification, rescission, and waiver, 30-2-209.

**28-2-1603 through 28-2-1610 reserved.**

**28-2-1611. When written contract may be revised by court.** When, through fraud or a mutual mistake of the parties or a mistake of one party while the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.

**History: En. Sec. 4430, Civ. C. 1895; re-en. Sec. 6108, Rev. C. 1907; re-en. Sec. 8726, R.C.M. 1921; Cal. Civ. C. Sec. 3399; Field Civ. C. Sec. 1899; re-en. Sec. 8726, R.C.M. 1935; R.C.M. 1947, 17-901.**

**Cross-References**
Interpretation of instruments — role of judge, 1-4-101.

**28-2-1612. Presumption that parties intended equitable agreement.** For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

**History: En. Sec. 4431, Civ. C. 1895; re-en. Sec. 6109, Rev. C. 1907; re-en. Sec. 8727, R.C.M. 1921; Cal. Civ. C. Sec. 3400; Field Civ. C. Sec. 1900; re-en. Sec. 8727, R.C.M. 1935; R.C.M. 1947, 17-902.**

**Cross-References**
Intention of parties — particular and general provisions, 1-4-103.
Intention of parties, Title 28, ch. 3, part 3.

**28-2-1613. Scope of court's inquiry.** In revising a written instrument, the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be.

**History: En. Sec. 4432, Civ. C. 1895; re-en. Sec. 6110, Rev. C. 1907; re-en. Sec. 8728, R.C.M. 1921; Cal. Civ. C. Sec. 3401; Field Civ. C. Sec. 1901; re-en. Sec. 8728, R.C.M. 1935; R.C.M. 1947, 17-903.**

**Cross-References**
Interpretation of instruments — role of judge, 1-4-101.

**28-2-1614. Specific enforcement of revised contract.** A contract may be first revised and then specifically enforced.

**History: En. Sec. 4433, Civ. C. 1895; re-en. Sec. 6111, Rev. C. 1907; re-en. Sec. 8729, R.C.M. 1921; Cal. Civ. C. Sec. 3402; Field Civ. C. Sec. 1902; re-en. Sec. 8729, R.C.M. 1935; R.C.M. 1947, 17-904.**

**Cross-References**
Specific performance, Title 27, ch. 1, part 4.

## Part 17
## Extinction of Contracts — Rescission

**Part Cross-References**
Breach of agreement to convey real property, 27-1-314.
Breach of agreement to buy real property, 27-1-315.
Specific and preventive relief, Title 27, ch. 1, part 4.
When final injunction may be granted to prevent breach of obligation, 27-19-102.
Modification, rescission, and waiver, 30-2-209.
U.C.C. — sales — breach, repudiation, and excuse, Title 30, ch. 2, part 6.
Canceled dealership contracts — repurchase requirements — dealer data, Title 30, ch. 11, part 7.
Termination, cancellation, nonrenewal, or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.
Personal solicitation sales — cancellation by buyer, 30-14-504, 30-14-505.
Retail installment contracts — buyer's right of rescission, 31-1-232.

**28-2-1701. How contract extinguished.** (1) A contract may be extinguished in the same manner as any other obligation and also in the manner prescribed by part 16 and this part.

(2) A contract is extinguished by its rescission.

**History: (1)En. Sec. 2260, Civ. C. 1895; re-en. Sec. 5061, Rev. C. 1907; re-en. Sec. 7563, R.C.M. 1921; Cal. Civ. C. Sec. 1682; re-en. Sec. 7563, R.C.M. 1935; Sec. 13-901, R.C.M. 1947; (2)En. Sec. 2270, Civ. C. 1895; re-en. Sec. 5062, Rev. C. 1907; re-en. Sec. 7564, R.C.M. 1921; Cal. Civ. C. Sec. 1688; Field Civ. C. Sec. 838; re-en. Sec. 7564, R.C.M. 1935; Sec. 13-902, R.C.M. 1947; R.C.M. 1947, 13-901, 13-902; amd. Sec. 23, Ch. 117, L. 1979.**

**Cross-References**

Damages for breach of contract, 27-1-311.
Extinction of obligation by performance, Title 28, ch. 1, part 11.
Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.
Accord and satisfaction, Title 28, ch. 1, part 14.
Kinds of novation, 28-1-1502.
How novation accomplished, 28-1-1503.
Extinction of obligation by release, 28-1-1601.
Revision, Title 28, ch. 2, part 16.
U.C.C. — sales — performance, Title 30, ch. 2, part 5.
U.C.C. — sales, breach, repudiation, and excuse, Title 30, ch. 2, part 6.

**28-2-1702. Extinction of written contract by destruction or cancellation.** The destruction or cancellation of a written contract or of the signature of the parties liable thereon with intent to extinguish the obligation thereof extinguishes it as to all the parties consenting to the act.

**History: En. Sec. 2282, Civ. C. 1895; re-en. Sec. 5068, Rev. C. 1907; re-en. Sec. 7570, R.C.M. 1921; Cal. Civ. C. Sec. 1699; re-en. Sec. 7570, R.C.M. 1935; R.C.M. 1947, 13-908.**

**28-2-1703. Extinction of executory obligations of contract by destruction, cancellation, or alteration.** (1) The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under the contract or with the party's consent extinguishes all the executory obligations of the contract in that party's favor against parties who do not consent to the act.

(2) When a contract is executed in duplicate, an alteration or destruction of one copy while the other exists is not within the provisions of subsection (1).

**History: En. Secs. 2283, 2284, Civ. C. 1895; re-en. Secs. 5069, 5070, Rev. C. 1907; re-en. Secs. 7571, 7572, R.C.M. 1921; Cal. Civ. C. Secs. 1700, 1701; Field Civ. C. Secs. 845, 846; re-en. Secs. 7571, 7572, R.C.M. 1935; R.C.M. 1947, 13-909, 13-910; amd. Sec. 788, Ch. 56, L. 2009.**

**Cross-References**

Executed versus executory contracts, 28-2-104.

**28-2-1704 through 28-2-1710 reserved.**

**28-2-1711. When party may rescind.** A party to a contract may rescind the contract in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with the party rescinding was given by mistake or obtained through duress, menace, fraud, or undue influence exercised by or with the connivance of the party as to whom the party rescinds or of any other party to the contract jointly interested with the party;

(2) if, through the fault of the party as to whom the other party rescinds, the consideration for the obligation of the party at fault fails in whole or in part;

(3) if the consideration becomes entirely void from any cause;

(4) if the consideration, before it is rendered to the rescinding party, fails in a material respect from any cause; or

(5) if all the other parties consent.

**History: En. Sec. 2271, Civ. C. 1895; re-en. Sec. 5063, Rev. C. 1907; re-en. Sec. 7565, R.C.M. 1921; Cal. Civ. C. Sec. 1689; Field Civ. C. Sec. 839; re-en. Sec. 7565, R.C.M. 1935; R.C.M. 1947, 13-903; amd. Sec. 24, Ch. 117, L. 1979; amd. Sec. 789, Ch. 56, L. 2009.**

**Cross-References**

Insane persons — disaffirmance, 28-2-202 through 28-2-204.
Effect of consent that is not free, 28-2-302.
Modification, rescission, and waiver, 30-2-209.
Minors — disaffirmance, Title 41, ch. 1, part 3.

**28-2-1712. When stipulation against rescission ineffective.** A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud or for mistake where such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation.

**History: En. Sec. 2272, Civ. C. 1895; re-en. Sec. 5064, Rev. C. 1907; re-en. Sec. 7566, R.C.M. 1921; Cal. Civ. C. Sec. 1690; Field Civ. C. Sec. 840; re-en. Sec. 7566, R.C.M. 1935; R.C.M. 1947, 13-904.**

**Cross-References**

Fraud, 28-2-404 through 28-2-406.
Mistake, 28-2-408 through 28-2-411.
U.C.C. — sales — contractual modification or limitation of remedy, 30-2-719.

**28-2-1713. How rescission accomplished.** Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding of reasonable diligence to comply with the following rules:

(1) The rescinding party shall rescind promptly upon discovering the facts that entitle the party to rescind if the party is free from duress, menace, undue influence, or disability and is aware of the right to rescind.

(2) The rescinding party shall restore to the other party everything of value that the rescinding party has received from the other party under the contract or shall offer to restore everything of value, upon condition that the other party shall do likewise, unless the other party is unable or positively refuses to do so.

**History: En. Sec. 2273, Civ. C. 1895; re-en. Sec. 5065, Rev. C. 1907; re-en. Sec. 7567, R.C.M. 1921; Cal. Civ. C. Sec. 1691; Field Civ. C. Sec. 841; re-en. Sec. 7567, R.C.M. 1935; R.C.M. 1947, 13-905; amd. Sec. 790, Ch. 56, L. 2009.**

**Cross-References**

U.C.C. — sales, modification, rescission, and waiver, 30-2-209.
U.C.C. — sales — seller's remedies, 30-2-702, 30-2-703.
U.C.C. — sales — buyer's remedies, 30-2-711.

**28-2-1714. When rescission may be adjudged.** The rescission of a written contract may be adjudged on the application of a party aggrieved:

(1) in any of the cases mentioned in 28-2-1711;

(2) where the contract is unlawful for causes not apparent upon its face and the parties were not equally in fault; or

(3) when the public interest will be prejudiced by permitting it to stand.

**History: En. Sec. 4440, Civ. C. 1895; re-en. Sec. 6112, Rev. C. 1907; re-en. Sec. 8730, R.C.M. 1921; Cal. Civ. C. Sec. 3406; Field Civ. C. Sec. 1903; re-en. Sec. 8730, R.C.M. 1935; R.C.M. 1947, 17-905.**

**Cross-References**

What is unlawful, 28-2-701.
Modification, rescission, and waiver, 30-2-209.

**28-2-1715. When rescission may be adjudged for mistake.** Rescission cannot be adjudged for mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

**History: En. Sec. 4441, Civ. C. 1895; re-en. Sec. 6113, Rev. C. 1907; re-en. Sec. 8731, R.C.M. 1921; Cal. Civ. C. Sec. 3407; Field Civ. C. Sec. 1904; re-en. Sec. 8731, R.C.M. 1935; R.C.M. 1947, 17-906.**

**Cross-References**

Mistake, 28-2-408 through 28-2-411.
Modification, rescission, and waiver, 30-2-209.

**28-2-1716. Power of court to require party rescinding to do equity.** On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

**History: En. Sec. 4442, Civ. C. 1895; re-en. Sec. 6114, Rev. C. 1907; re-en. Sec. 8732, R.C.M. 1921; Cal. Civ. C. Sec. 3408; Field Civ. C. Sec. 1905; re-en. Sec. 8732, R.C.M. 1935; R.C.M. 1947, 17-907.**

**Cross-References**

Parties who cannot obtain specific performance, 27-1-416.

## Parts 18 through 20 reserved

## Part 21

## Payment of Construction Contractors and Subcontractors

**28-2-2101. Definitions.** As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.

(7) "Receipt" or "receive" means actual receipt.

(8) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

(9) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract.

**History: En. Sec. 3, Ch. 470, L. 1999; amd. Sec. 1, Ch. 274, L. 2003.**

**28-2-2102. Performance entitles contractor or subcontractor to payment.** (1) Performance by a contractor of a construction contract in accordance with the provisions of the contract entitles a contractor to payment from the owner.

(2) Performance by a subcontractor of a subcontract entitles the subcontractor to payment from the contractor.

**History: En. Sec. 4, Ch. 470, L. 1999.**

**28-2-2103. Payment to contractor and subcontractor.** (1) (a) Except as provided in 28-2-2115, each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner is considered to have received a payment request when the payment request is submitted to any person designated by the owner in the contract to receive the payment request.

(b) Except as provided in 28-2-2115, a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner or the person designated in the contract by the owner to receive the payment request unless, prior to that time, the owner provides the contractor with a written statement containing specific items in the request for payment that are being disapproved by the owner.

(c) The owner may disapprove the request for payment or a portion of the request based upon a claim of:

(i) unsatisfactory job progress;

(ii) failure to remedy defective construction work or materials;

(iii) disputed work or materials;

(iv) failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;

(v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;

(vi) damage to the owner; or

(vii) the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.

(d) An owner may withhold from a payment only an amount that is sufficient to pay the direct expenses that the owner may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).

(e) A written statement by an owner must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner disapproves only a portion of a request for payment, the remainder of the request for payment must be considered approved.

(f) Except as provided in 28-2-2115, if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) (a) Within 7 days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) (a) Within 7 days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

**History: En. Sec. 5, Ch. 470, L. 1999; amd. Sec. 2, Ch. 274, L. 2003.**

**28-2-2104. Obligations upon delay of payment.** (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1½% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1½% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

(3) Acceptance of the final payment releases any claim for interest on the payment.

**History: En. Sec. 6, Ch. 470, L. 1999; amd. Sec. 1, Ch. 244, L. 2005; amd. Sec. 1, Ch. 254, L. 2009.**

**28-2-2105. Prevailing party entitled to costs and attorney fees.** In a civil action on a contract to enforce an obligation imposed by this part, the prevailing party is entitled to reasonable attorney fees and costs, both for trial and appeal. If the parties to a construction contract or subcontract use arbitration, the arbitrator may award fees and costs as the arbitrator may determine.

**History: En. Sec. 7, Ch. 470, L. 1999.**

**28-2-2106. Remedies not exclusive.** The remedies provided by this part are not exclusive of any other remedy provided by law or contract.

**History:** En. Sec. 8, Ch. 470, L. 1999.

**28-2-2107. Exception for certain residential dwellings.** The provisions of this part do not apply to residential projects or improvements to real property intended for residential purposes with a total cost of less than $400,000.

**History:** En. Sec. 9, Ch. 470, L. 1999; amd. Sec. 2, Ch. 364, L. 2001.

**28-2-2108 and 28-2-2109 reserved.**

**28-2-2110. Limit on retainage.** (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5%.

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

(3) Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the construction contract.

**History:** En. Sec. 1, Ch. 364, L. 2001; amd. Sec. 2, Ch. 244, L. 2005.

**Cross-References**

Limit on retainage for public contracts, 18-2-316.

**28-2-2111. Construction contract indemnification provisions.** (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including any agreement to supply labor, materials, or equipment for an improvement to real property.

**History:** En. Sec. 1, Ch. 305, L. 2003.

**28-2-2112 through 28-2-2114 reserved.**

**28-2-2115. Alternative billing cycle.** (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than 21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Extended Payment Provision This contract allows the owner to make payment within ___ days after approval of the payments.

**History:** **En. Sec. 3, Ch. 274, L. 2003.**

**28-2-2116. Construction contracts — void provisions.** (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

**History:** **En. Sec. 4, Ch. 274, L. 2003.**

**28-2-2117. Suspension of performance — termination.** (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restartup of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

**History:** En. Sec. 5, Ch. 274, L. 2003.

## Part 22
## Residential Construction — Disclosure and Warranty Requirements

**28-2-2201. Residential construction contracts — disclosure and warranty requirements.** (1) For the purposes of this section, "residential construction contract" means a contract between a general contractor and an owner for the construction of a new residence.

(2) All residential construction contracts that are subject to the provisions of this section must be in writing and must contain the following:

(a) a disclosure that the general contractor has a current general liability policy;

(b) a disclosure that the general contractor has a workers' compensation policy or is an independent contractor without employees;

(c) a provision setting out the billing cycle establishing the payment schedule to be followed by the owner;

(d) a provision establishing procedures for handling change orders by the owner;

(e) a statement of all inspections and tests that the general contractor will perform or have performed prior to, during, or upon completion of construction and a statement that the owner is entitled to receive the results of any tests conducted by the general contractor or conducted at the general contractor's request;

(f) a statement that the owner is entitled at the owner's expense to have any inspections and tests conducted that the owner considers necessary; and

(g) a statement that the general contractor is providing an express warranty that is valid for a period of at least 1 year from completion of the construction project. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become applicable.

**History:** **En. Sec. 1, Ch. 302, L. 2009.**

**28-2-2202. Disclosure and warranty requirements for sales of newly constructed residences.** (1) This section applies only to the sale of a newly constructed residence that has not been previously occupied and where the seller is the builder or a developer who has built or had the residence built for the purpose of resale.

(2) A builder or developer that is subject to the provisions of this section is required to provide to a buyer, prior to the sale of a new residence, the following:

(a) a statement of all inspections and tests that the general contractor performed or had performed prior to, during, or upon completion of construction of the residence that is the subject of the potential sale; and

(b) an express warranty that is valid for a period of at least 1 year from the date of the sale of the residence. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provisions to become applicable.

**History:** **En. Sec. 2, Ch. 302, L. 2009.**

# CHAPTER 3
# INTERPRETATION OF CONTRACTS

### Part 1 — General Provisions

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28-3-704. Contractual right to attorney fees treated as reciprocal — exception.

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**Chapter Cross-References**

Interpretation of instruments, Title 1, ch. 4.
Validity of interest rate set by contract, 27-1-213.
Breach of contract, 27-1-311.
Actions based on contract or other obligation, 27-2-202.
Actions for damages arising out of work on improvements to real property, 27-2-208.
Circumstances that extend period of limitations on actions, Title 27, ch. 2, part 4.
Arbitration, Title 27, ch. 5.
Who may obtain declaratory judgment, 27-8-202.
When contract may be construed, 27-8-203.
Cases in which property may be attached, 27-18-101.
Judgment when debt not yet due, 27-18-901.
U.C.C. — sales — general obligation and construction of contract, Title 30, ch. 2, part 3.
Construction of contracts — weights, measures, and standards, 30-12-106.
Construction of insurance policies, 33-15-316.

## Part 1
## General Provisions

**28-3-101. Rules of interpretation to be uniform.** All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

**History:** En. Sec. 2200, Civ. C. 1895; re-en. Sec. 5024, Rev. C. 1907; re-en. Sec. 7526, R.C.M. 1921; Cal. Civ. C. Sec. 1635; Field Civ. C. Sec. 800; re-en. Sec. 7526, R.C.M. 1935; R.C.M. 1947, 13-701.

**Cross-References**

Interpretation of instruments, Title 1, ch. 4.
Public obligations registration — construction, 17-5-1104.
What rules govern interpretation of contracts and other obligations, 28-1-103.

**28-3-102. What law and usage to govern interpretation.** A contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

**History:** En. Sec. 2211, Civ. C. 1895; re-en. Sec. 5035, Rev. C. 1907; re-en. Sec. 7537, R.C.M. 1921; Cal. Civ. C. Sec. 1646; Field Civ. C. Sec. 811; re-en. Sec. 7537, R.C.M. 1935; R.C.M. 1947, 13-712.

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
Liability under guaranty of incomplete contract, 28-11-202.
U.C.C. — course of dealing and usage of trade, 30-1-205.

## Part 2
## General Rules of Interpretation

**Part Cross-References**

Interpretation of instruments, Title 1, ch. 4.
What rules govern interpretation of contracts and other obligations, 28-1-103.
General obligation and construction of contract, Title 30, ch. 2, part 3.

**28-3-201. Interpretation giving effect to contract favored.** A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect if it can be done without violating the intention of the parties.

**History: En. Sec. 2208, Civ. C. 1895; re-en. Sec. 5032, Rev. C. 1907; re-en. Sec. 7534, R.C.M. 1921; Cal. Civ. C. Sec. 1643; Field Civ. C. Sec. 808; re-en. Sec. 7534, R.C.M. 1935; R.C.M. 1947, 13-709.**

**Cross-References**

What ought to have been done, 1-3-220.
Certainty, 1-3-229.
Avoiding voidness, 1-3-232.
Formation in general, 30-2-204.

**28-3-202. Effect to be given to every part of contract.** The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.

**History: En. Sec. 2206, Civ. C. 1895; re-en. Sec. 5030, Rev. C. 1907; re-en. Sec. 7532, R.C.M. 1921; Cal. Civ. C. Sec. 1641; Field Civ. C. Sec. 806; re-en. Sec. 7532, R.C.M. 1935; R.C.M. 1947, 13-707.**

**28-3-203. When several contracts taken together.** Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.

**History: En. Sec. 2207, Civ. C. 1895; re-en. Sec. 5031, Rev. C. 1907; re-en. Sec. 7533, R.C.M. 1921; Cal. Civ. C. Sec. 1642; Field Civ. C. Sec. 807; re-en. Sec. 7533, R.C.M. 1935; R.C.M. 1947, 13-708.**

**Cross-References**

Final written expression — parol or extrinsic evidence, 30-2-202.
Additional terms in acceptance or confirmation, 30-2-207.
U.C.C. — sales — remedies for breach of collateral contracts not impaired, 30-2-701.

**28-3-204. How repugnancies reconciled.** Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

**History: En. Sec. 2217, Civ. C. 1895; re-en. Sec. 5041, Rev. C. 1907; re-en. Sec. 7543, R.C.M. 1921; Cal. Civ. C. Sec. 1652; Field Civ. C. Sec. 817; re-en. Sec. 7543, R.C.M. 1935; R.C.M. 1947, 13-718.**

**Cross-References**

Intention of parties — particular and general provisions, 1-4-103.
Construction of terms, 1-4-107.
Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.
Particular clauses subordinate to general intent, 28-3-307.
Additional terms in acceptance or confirmation, 30-2-207.
Options and cooperation respecting performance, 30-2-311.

**28-3-205. Written or original terms to control printed terms.** Where a contract is partly written and partly printed or where part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and, if the two are absolutely repugnant, the latter must be so far disregarded.

**History: En. Sec. 2216, Civ. C. 1895; re-en. Sec. 5040, Rev. C. 1907; re-en. Sec. 7542, R.C.M. 1921; Cal. Civ. C. Sec. 1651; Field Civ. C. Sec. 816; re-en. Sec. 7542, R.C.M. 1935; R.C.M. 1947, 13-717.**

**Cross-References**

Written words versus words in printed form, 1-4-105.

**28-3-206. Uncertainty to be resolved against party causing it.** In cases of uncertainty not removed by parts 1 through 5 of this chapter, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be that party.

**History: En. Sec. 2219, Civ. C. 1895; re-en. Sec. 5043, Rev. C. 1907; re-en. Sec. 7545, R.C.M. 1921; Cal. Civ. C. Sec. 1654; Field Civ. C. Sec. 819; re-en. Sec. 7545, R.C.M. 1935; R.C.M. 1947, 13-720; amd. Sec. 25, Ch. 117, L. 1979; amd. Sec. 1, Ch. 31, L. 2013.**

**Cross-References**

Consideration of circumstances surrounding execution, 1-4-102.
Public contracts — contract actions against state, Title 18, ch. 1, part 4.
Express versus implied contracts, 28-2-103.
When extrinsic evidence concerning written agreement may be considered, 28-2-905.
Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.
Additional terms in acceptance or confirmation, 30-2-207.

## Part 3

## Intention of the Parties

**Part Cross-References**

Intention of parties — particular and general provisions, 1-4-103.
When contract considered pledge to transfer property, 71-2-102.
Lien or contract for lien transfers no title, 71-3-108.

**28-3-301. Interpretation to give effect to mutual intention.** A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

**History: En. Sec. 2201, Civ. C. 1895; re-en. Sec. 5025, Rev. C. 1907; re-en. Sec. 7527, R.C.M. 1921; Cal. Civ. C. Sec. 1636; Field Civ. C. Sec. 801; re-en. Sec. 7527, R.C.M. 1935; R.C.M. 1947, 13-702.**

**Cross-References**

Essential characteristics of consent, 28-2-301.
When consent is mutual, 28-2-303.
What is unlawful, 28-2-701.

**28-3-302. How intention ascertained.** For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

**History: En. Sec. 2202, Civ. C. 1895; re-en. Sec. 5026, Rev. C. 1907; re-en. Sec. 7528, R.C.M. 1921; Cal. Civ. C. Sec. 1637; Field Civ. C. Sec. 802; re-en. Sec. 7528, R.C.M. 1935; R.C.M. 1947, 13-703.**

**28-3-303. Writing generally to determine intention.** When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.

**History: En. Sec. 2204, Civ. C. 1895; re-en. Sec. 5028, Rev. C. 1907; re-en. Sec. 7530, R.C.M. 1921; Cal. Civ. C. Sec. 1639; Field Civ. C. Sec. 804; re-en. Sec. 7530, R.C.M. 1935; R.C.M. 1947, 13-705.**

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
Construction of terms, 1-4-107.
Formal requirements — statute of frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-3-304. When writing disregarded.** When through fraud, mistake, or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded.

**History: En. Sec. 2205, Civ. C. 1895; re-en. Sec. 5029, Rev. C. 1907; re-en. Sec. 7531, R.C.M. 1921; Cal. Civ. C. Sec. 1640; Field Civ. C. Sec. 805; re-en. Sec. 7531, R.C.M. 1935; R.C.M. 1947, 13-706.**

**Cross-References**

Consideration of circumstances surrounding execution, 1-4-102.
Liability for damages for deceit, 27-1-712.
Duty to restore thing wrongfully acquired or retained, 27-1-713.
Actions for relief on ground of fraud or mistake, 27-2-203.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-3-305. Contract restricted to its apparent objects.** However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

**History: En. Sec. 2213, Civ. C. 1895; re-en. Sec. 5037, Rev. C. 1907; re-en. Sec. 7539, R.C.M. 1921; Cal. Civ. C. Sec. 1648; Field Civ. C. Sec. 813; re-en. Sec. 7539, R.C.M. 1935; R.C.M. 1947, 13-714.**

**Cross-References**

Object of contract defined, 28-2-601.
Formation in general, 30-2-204.
Offer and acceptance in formation of contract, 30-2-206.
Additional terms in acceptance and confirmation, 30-2-207.

**28-3-306. Interpretation of terms that are ambiguous or intended in different sense by different parties.** (1) If the terms of a promise are in any respect ambiguous or uncertain, the promise must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

(2) When the terms of an agreement have been intended in a different sense by different parties to the agreement, that sense is to prevail against either party in which the party supposed the other party understood it. If different constructions of a provision are otherwise equally proper, that construction is to be taken that is most favorable to the party in whose favor the provision was made.

**History: (1)En. Sec. 2214, Civ. C. 1895; re-en. Sec. 5038, Rev. C. 1907; re-en. Sec. 7540, R.C.M. 1921; Cal. Civ. C. Sec. 1649; Field Civ. C. Sec. 814; re-en. Sec. 7540, R.C.M. 1935; Sec. 13-715, R.C.M. 1947; (2)En. Sec. 618, p. 200, L. 1877; re-en. Sec. 618, 1st Div. Rev. Stat. 1879; re-en. Sec. 636, 1st Div. Comp. Stat. 1887; re-en. Sec. 3140, C. Civ. Proc. 1895; re-en. Sec. 7881, Rev. C. 1907; re-en. Sec. 10525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1864; re-en. Sec. 10525, R.C.M. 1935; Sec. 93-401-21, R.C.M. 1947; R.C.M. 1947, 13-715, 93-401-21; amd. Sec. 791, Ch. 56, L. 2009.**

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
Construction of terms, 1-4-107.
When extrinsic evidence concerning written agreement may be considered, 28-2-905.
Uncertainty to be resolved against party causing it, 28-3-206.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-3-307. Particular clauses subordinate to general intent.** Particular clauses of a contract are subordinate to its general intent.

**History: En. Sec. 2215, Civ. C. 1895; re-en. Sec. 5039, Rev. C. 1907; re-en. Sec. 7541, R.C.M. 1921; Cal. Civ. C. Sec. 1650; Field Civ. C. Sec. 815; re-en. Sec. 7541, R.C.M. 1935; R.C.M. 1947, 13-716.**

**Cross-References**

Particular versus general, 1-3-225.
Intention of parties — particular and general provisions, 1-4-103.
How repugnancies reconciled, 28-3-204.
U.C.C. — sales — general obligation and construction of contract, Title 30, ch. 2, part 3.

## Part 4
## Factors Considered in Determining Intention

**Part Cross-References**

General obligations of parties, 30-2-301.
Allocation or division of risks, 30-2-303.

**28-3-401. Extent to which language governs interpretation.** The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.

**History: En. Sec. 2203, Civ. C. 1895; re-en. Sec. 5027, Rev. C. 1907; re-en. Sec. 7529, R.C.M. 1921; Cal. Civ. C. Sec. 1638; Field Civ. C. Sec. 803; re-en. Sec. 7529, R.C.M. 1935; R.C.M. 1947, 13-704.**

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
Formal requirements — statute of frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.

**28-3-402. Reference to circumstances permissible.** A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

**History: En. Sec. 2212, Civ. C. 1895; re-en. Sec. 5036, Rev. C. 1907; re-en. Sec. 7538, R.C.M. 1921; Cal. Civ. C. Sec. 1647; Field Civ. C. Sec. 812; re-en. Sec. 7538, R.C.M. 1935; R.C.M. 1947, 13-713.**

**Cross-References**

Consideration of circumstances surrounding execution, 1-4-102.
When extrinsic evidence concerning written agreement may be considered, 28-2-905.
Course of dealing and usage of trade, 30-1-205.
Course of performance or practical construction, 30-2-208.

**28-3-403. Superseded.** Sup. Ct. Ord. No. 12729, July 10, 1979.

**History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part); amd. Sec. 26, Ch. 117, L. 1979.**

## Part 5
## Interpretation of Words

**Part Cross-References**

Construction of words and phrases, 1-2-106.
Interpretation of language according to usage in place of execution, 1-4-106.
Life and Disability Insurance Policy Language Simplification Act, 33-15-321 through 33-15-329.

**28-3-501. Words generally understood in their ordinary sense.** The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a special meaning is given to them by usage, in which case the latter must be followed.

**History:** En. Sec. 2209, Civ. C. 1895; re-en. Sec. 5033, Rev. C. 1907; re-en. Sec. 7535, R.C.M. 1921; Cal. Civ. C. Sec. 1644; Field Civ. C. Sec. 809; re-en. Sec. 7535, R.C.M. 1935; R.C.M. 1947, 13-710.

**Cross-References**

Construction of terms, 1-4-107.

**28-3-502. Interpretation of technical words.** Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate unless clearly used in a different sense.

**History:** En. Sec. 2210, Civ. C. 1895; re-en. Sec. 5034, Rev. C. 1907; re-en. Sec. 7536, R.C.M. 1921; Cal. Civ. C. Sec. 1645; Field Civ. C. Sec. 810; re-en. Sec. 7536, R.C.M. 1935; R.C.M. 1947, 13-711.

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
Construction of terms, 1-4-107.

**28-3-503. Inconsistent words to be rejected.** Words in a contract which are wholly inconsistent with its nature or with the main intention of the parties are to be rejected.

**History:** En. Sec. 2218, Civ. C. 1895; re-en. Sec. 5042, Rev. C. 1907; re-en. Sec. 7544, R.C.M. 1921; Cal. Civ. C. Sec. 1653; Field Civ. C. Sec. 818; re-en. Sec. 7544, R.C.M. 1935; R.C.M. 1947, 13-719.

**Cross-References**

Intention of parties — particular and general provisions, 1-4-103.
Construction of terms, 1-4-107.
Course of performance or practical construction, 30-2-208.

## Part 6
## Time of Performance

**Part Cross-References**

Rules concerning time, Title 1, ch. 1, part 3.
Time — reasonable time — "seasonably", 30-1-204.
Time for payment for ores, 82-2-421.

**28-3-601. Time of performance when not specified.** If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly (for example, if it consists in the payment of money only), it must be performed immediately upon the thing to be done being exactly ascertained.

**History:** En. Sec. 2222, Civ. C. 1895; re-en. Sec. 5046, Rev. C. 1907; re-en. Sec. 7548, R.C.M. 1921; Cal. Civ. C. Sec. 1657; Field Civ. C. Sec. 822; re-en. Sec. 7548, R.C.M. 1935; R.C.M. 1947, 13-723.

**Cross-References**

Absence of specific time provisions — notice of termination, 30-2-309.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
Delivery to be within reasonable hours, 30-11-208.

**28-3-602. When time considered of the essence.** Time is never considered as of the essence of a contract unless by its terms expressly so provided.

**History:** En. Sec. 2223, Civ. C. 1895; re-en. Sec. 5047, Rev. C. 1907; re-en. Sec. 7549, R.C.M. 1921; Cal. Civ. C. Sec. 1658; Field Civ. C. Sec. 823; re-en. Sec. 7549, R.C.M. 1935; R.C.M. 1947, 13-724.

**Cross-References**

Absence of specific time provisions — notice of termination, 30-2-309.

**28-3-603. Postponement of performance date which falls on holiday.** Whenever any act of a secular nature other than a work of necessity or mercy is appointed by contract to be performed upon a particular day which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

**History:** En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109.

**Cross-References**

Legal holidays and business days, 1-1-216.
Banks — transaction on holidays, 32-1-482.
Saturday treated as banking holiday, 32-1-483.

## Part 7
## Provisions Implied by Law

**Part Cross-References**

General obligations of parties, 30-2-301.

**28-3-701. Stipulations necessary for reasonableness or conformity to usage.** Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention.

**History: En. Sec. 2220, Civ. C. 1895; re-en. Sec. 5044, Rev. C. 1907; re-en. Sec. 7546, R.C.M. 1921; Cal. Civ. C. Sec. 1655; Field Civ. C. Sec. 820; re-en. Sec. 7546, R.C.M. 1935; R.C.M. 1947, 13-721.**

**Cross-References**

Reasonableness, 1-3-233.
Interpretation of language according to usage in place of execution, 1-4-106.
Course of dealing and usage of trade, 30-1-205.
Course of performance or practical construction, 30-2-208.

**28-3-702. Necessary and incidental terms.** All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom unless some of them are expressly mentioned therein, in which case all other things of the same class are considered to be excluded.

**History: En. Sec. 2221, Civ. C. 1895; re-en. Sec. 5045, Rev. C. 1907; re-en. Sec. 7547, R.C.M. 1921; Cal. Civ. C. Sec. 1656; Field Civ. C. Sec. 821; re-en. Sec. 7547, R.C.M. 1935; R.C.M. 1947, 13-722; amd. Sec. 27, Ch. 117, L. 1979.**

**Cross-References**

Grant includes essentials, 1-3-213.
Final written expression — parol or extrinsic evidence, 30-2-202.
Additional terms in acceptance or confirmation, 30-2-207.

**28-3-703. When promise presumed to be joint and several.** (1) Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

(2) A promise made in the singular number but executed by several persons is presumed to be joint and several.

**History: En. Secs. 2224, 2225, Civ. C. 1895; re-en. Secs. 5048, 5049, Rev. C. 1907; re-en. Secs. 7550, 7551, R.C.M. 1921; Cal. Civ. C. Secs. 1659, 1660; Field Civ. C. Secs. 824, 825; re-en. Secs. 7550, 7551, R.C.M. 1935; R.C.M. 1947, 13-725, 13-726.**

**Cross-References**

Joint obligations, Title 28, ch. 1, part 3.

**28-3-704. Contractual right to attorney fees treated as reciprocal — exception.** (1) Except as provided in subsection (2), whenever, by virtue of the provisions of any contract or obligation in the nature of a contract made and entered into at any time after July 1, 1971, one party to the contract or obligation has an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right brings an action upon the contract or obligation, then in any action on the contract or obligation all parties to the contract or obligation are considered to have the same right to recover attorney fees and the prevailing party in any action, whether by virtue of the express contractual right or by virtue of this section, is entitled to recover reasonable attorney fees from the losing party or parties.

(2) For a contract or obligation negotiated between a private party and a party with condemnation authority over the private party's property, the party with condemnation authority is not entitled to recover attorney fees from the losing party or parties pursuant to subsection (1) in an action to enforce a contract or obligation involving the property.

**History: En. Sec. 1, Ch. 259, L. 1971; R.C.M. 1947, 93-8601.1; amd. Sec. 792, Ch. 56, L. 2009; amd. Sec. 1, Ch. 313, L. 2017.**

**Cross-References**

Eminent domain, Art. II, sec. 29, Mont. Const.
Exclusion of attorney fees in contract dispute with state, 18-1-404.
Attorney fees, Title 25, ch. 10, part 3.
U.C.C. — negotiable instruments — tender of payment excludes, 30-3-604.
Eminent domain generally, Title 70, ch. 30.

## CHAPTERS 4 THROUGH 9
## RESERVED

# CHAPTER 10
# AGENCY

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**Chapter Cross-References**

State as agent, 17-2-102. .
Artist and art dealer — relationship defined — dealer as agent, Title 22, ch. 2, part 5.

Signature by authorized representative, 30-3-403.
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Principal-agent relationship grounds for disqualification — condemnation commissioners, 70-30-207.
Powers of attorney, Title 72, ch. 5, part 5.
Trust administration, Title 72, ch. 38.

## Part 1
## General Provisions

**28-10-101. Definitions of agent and agency.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

**History: En. Sec. 3070, Civ. C. 1895; re-en. Sec. 5413, Rev. C. 1907; re-en. Sec. 7928, R.C.M. 1921; Cal. Civ. C. Sec. 2295; Field Civ. C. Sec. 1216; re-en. Sec. 7928, R.C.M. 1935; R.C.M. 1947, 2-101.**

**Cross-References**
Factor defined, 30-11-601.
Criminal investigation agent, 44-2-111.
Liability for acts committed by or for another, Title 45, ch. 2, part 3.
Agent acting for corporation when law not complied with — misdemeanor, 45-2-311.

**28-10-102. General versus special agents.** An agent for a particular act or transaction is called a special agent. All others are general agents.

**History: En. Sec. 3072, Civ. C. 1895; re-en. Sec. 5415, Rev. C. 1907; re-en. Sec. 7930, R.C.M. 1921; Cal. Civ. C. Sec. 2297; Field Civ. C. Sec. 1218; re-en. Sec. 7930, R.C.M. 1935; R.C.M. 1947, 2-103.**

**28-10-103. Actual versus ostensible agency — limitation.** (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal's agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) (a) Subsection (2) is not applicable unless the health care provider has instituted a policy or practice requiring persons providing independent professional services to have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.

(b) Failure of a health care provider providing independent professional services to comply with a policy or practice implementing subsection (3)(a) constitutes unprofessional conduct pursuant to 37-1-316(1)(s) and 37-2-304.

**History: En. Secs. 3073, 3074, 3075, Civ. C. 1895; re-en. Secs. 5416, 5417, 5418, Rev. C. 1907; re-en. Secs. 7931, 7932, 7933, R.C.M. 1921; Cal. Civ. C. Secs. 2298, 2299, 2300; Field Civ. C. Secs. 1219, 1220, 1221; re-en. Secs. 7931, 7932, 7933, R.C.M. 1935; R.C.M. 1947, 2-104, 2-105, 2-106; amd. Sec. 1, Ch. 44, L. 2005; amd. Sec. 1, Ch. 440, L. 2007; amd. Sec. 1, Ch. 158, L. 2009; amd. Sec. 1, Ch. 381, L. 2023; amd. Sec. 3, Ch. 284, L. 2025.**

**Compiler's Comments**
*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 284, L. 2025. Amendment effective October 1, 2025.

**Cross-References**
Authority of agent, Title 28, ch. 10, part 4.
Authority of factor, 30-11-606.
Ostensible authority, 30-11-607.

**28-10-104. Who may appoint an agent, who may be an agent.** Any person having capacity to contract, except a minor, may appoint an agent, and any person may be an agent.

**History:** **En. Secs. 16, 3071, Civ. C. 1895; re-en. Secs. 3590, 5414, Rev. C. 1907; re-en. Secs. 5678, 7929, R.C.M. 1921; Cal. Civ. C. Secs. 33, 2296; Field Civ. C. Secs. 15, 1217; re-en. Secs. 5678, 7929, R.C.M. 1935; R.C.M. 1947, 2-102, 64-105; amd. Sec. 28, Ch. 117, L. 1979.**

**Cross-References**

University agency fund — state agency fund, 17-2-102.
Artist and art dealer — agency relationship, 22-2-503.
Who may contract, 28-2-201.
Applicability of laws relating to capacity to contract, 28-10-704.
Agency status of collecting banks, 30-4-201.
Cooperative agricultural marketing — who may be members, 35-17-301.
Delegation of power by minors forbidden, 41-1-301.

**28-10-105. What acts agent may perform.** (1) An agent may be authorized to do any acts that the principal might do, except those to which the principal is bound to give personal attention.

(2) Every act that, according to this code, may be done by or to any person may be done by or to the agent of the person for that purpose unless a contrary intention clearly appears.

**History:** **En. Secs. 3080, 3081, Civ. C. 1895; re-en. Secs. 5419, 5420, Rev. C. 1907; re-en. Secs. 7934, 7935, R.C.M. 1921; Cal. Civ. C. Secs. 2304, 2305; Field Civ. C. Secs. 1222, 1223; re-en. Secs. 7934, 7935, R.C.M. 1935; R.C.M. 1947, 2-107, 2-108; amd. Sec. 793, Ch. 56, L. 2009.**

**Cross-References**

Who must make offer of performance, 28-1-1204.
To whom offer must be made, 28-1-1205.
Agent not to exceed actual authority, 28-10-301.
What authority agent has, 28-10-401.
Implied powers of agent, 28-10-405.
Accrual of rights and liabilities to principal, 28-10-601.
Obedience required from factor, 30-11-602.
Authority of factor, 30-11-606.
Powers of associations, 35-17-106.
Inspection or transfer of criminal history records, 44-5-214.
Board of Housing as agent, 90-6-104.

## Part 2
## Creation of Agency

**Part Cross-References**

Master and servant — term of hiring, 39-2-602.

**28-10-201. How agency may be created.** An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification.

**History:** **En. Sec. 3083, Civ. C. 1895; re-en. Sec. 5422, Rev. C. 1907; re-en. Sec. 7937, R.C.M. 1921; Cal. Civ. C. Sec. 2307; Field Civ. C. Sec. 1225; re-en. Sec. 7937, R.C.M. 1935; R.C.M. 1947, 2-114.**

**Cross-References**

Presumption and duration of agency status of collecting bank, 30-4-201.

**28-10-202. Consideration unnecessary.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

**History:** **En. Sec. 3084, Civ. C. 1895; re-en. Sec. 5423, Rev. C. 1907; re-en. Sec. 7938, R.C.M. 1921; Cal. Civ. C. Sec. 2308; Field Civ. C. Sec. 1226; re-en. Sec. 7938, R.C.M. 1935; R.C.M. 1947, 2-115.**

**Cross-References**

Consideration, Title 28, ch. 2, part 8.

**28-10-203. When written authorization necessary.** An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

**History:** **En. Sec. 3085, Civ. C. 1895; re-en. Sec. 5424, Rev. C. 1907; re-en. Sec. 7939, R.C.M. 1921; Cal. Civ. C. Sec. 2309; Based on Field Civ. C. Sec. 1227; re-en. Sec. 7939, R.C.M. 1935; R.C.M. 1947, 2-116.**

**Cross-References**

Artist-art dealer relationship — writing required, 22-2-503.
What contracts must be in writing, 28-2-903.
When agent responsible to third persons as principal, 28-10-702.
Formal requirements — statute of frauds, 30-2-201.
Contract for sale of real property, 30-11-111.

**28-10-204 through 28-10-210 reserved.**

**28-10-211. How agent's act ratified.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, whenever an oral authorization would suffice, by knowingly accepting or retaining the benefit of the act.

**History:** **En. Sec. 3086, Civ. C. 1895; re-en. Sec. 5425, Rev. C. 1907; re-en. Sec. 7940, R.C.M. 1921; Cal. Civ. C. Sec. 2310; Field Civ. C. Sec. 1228; re-en. Sec. 7940, R.C.M. 1935; R.C.M. 1947, 2-117; amd. Sec. 29, Ch. 117, L. 1979.**

**Cross-References**

Principal's consent needed to relieve factor from liability, 30-11-605.

**28-10-212. Ratification of part of indivisible transaction.** Ratification of part of an indivisible transaction is a ratification of the whole.

**History:** **En. Sec. 3087, Civ. C. 1895; re-en. Sec. 5426, Rev. C. 1907; re-en. Sec. 7941, R.C.M. 1921; Cal. Civ. C. Sec. 2311; Field Civ. C. Sec. 1229; re-en. Sec. 7941, R.C.M. 1935; R.C.M. 1947, 2-118.**

**28-10-213. Ratification not to prejudice third persons.** No unauthorized act can be made valid retroactively to the prejudice of third persons without their consent.

**History:** **En. Sec. 3089, Civ. C. 1895; re-en. Sec. 5428, Rev. C. 1907; re-en. Sec. 7943, R.C.M. 1921; Cal. Civ. C. Sec. 2313; Field Civ. C. Sec. 1231; re-en. Sec. 7943, R.C.M. 1935; R.C.M. 1947, 2-120.**

**Cross-References**

When agent responsible to third persons as principal, 28-10-702.

**28-10-214. When ratification void.** A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

**History:** **En. Sec. 3088, Civ. C. 1895; re-en. Sec. 5427, Rev. C. 1907; re-en. Sec. 7942, R.C.M. 1921; Cal. Civ. C. Sec. 2312; Field Civ. C. Sec. 1230; re-en. Sec. 7942, R.C.M. 1935; R.C.M. 1947, 2-119.**

**Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**28-10-215. When ratification may be rescinded.** A ratification may be rescinded when made without such consent as is required in a contract or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

**History:** **En. Sec. 3090, Civ. C. 1895; re-en. Sec. 5429, Rev. C. 1907; re-en. Sec. 7944, R.C.M. 1921; Cal. Civ. C. Sec. 2314; Field Civ. C. Sec. 1232; re-en. Sec. 7944, R.C.M. 1935; R.C.M. 1947, 2-121.**

**Cross-References**

Extinction of contracts — rescission, Title 28, ch. 2, part 17.
Modification, rescission, and waiver, 30-2-209.

## Part 3
## Duties of Agent

**Part Cross-References**

Rules determining rights and duties of partners, 35-10-401.

**28-10-301. Agent not to exceed actual authority.** An agent may not exceed the limits of the agent's actual authority as defined by Title 30, chapter 11, parts 5 and 6, and this chapter.

**History:** **En. Sec. 2740, Civ. C. 1895; re-en. Sec. 5286, Rev. C. 1907; re-en. Sec. 7801, R.C.M. 1921; Cal. Civ. C. Sec. 2019; Field Civ. C. Sec. 1041; re-en. Sec. 7801, R.C.M. 1935; R.C.M. 1947, 2-109; amd. Sec. 30, Ch. 117, L. 1979; amd. Sec. 794, Ch. 56, L. 2009.**

**Cross-References**

Obedience required from factor, 30-11-602.
Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

**28-10-302. Duty to keep principal informed.** An agent shall use ordinary diligence to keep the agent's principal informed of the agent's acts in the course of the agency.

**History:** **En. Sec. 2741, Civ. C. 1895; re-en. Sec. 5287, Rev. C. 1907; re-en. Sec. 7802, R.C.M. 1921; Cal. Civ. C. Sec. 2020; Field Civ. C. Sec. 1042; re-en. Sec. 7802, R.C.M. 1935; R.C.M. 1947, 2-110; amd. Sec. 795, Ch. 56, L. 2009.**

**28-10-303. Duty of agent employed to collect negotiable instrument.** An agent employed to collect a negotiable instrument must collect it promptly and take all measures necessary to charge the parties thereto in case of its dishonor and, if it is a bill of exchange, present it for acceptance with reasonable diligence.

**History:** **En. Sec. 2742, Civ. C. 1895; re-en. Sec. 5288, Rev. C. 1907; re-en. Sec. 7803, R.C.M. 1921; Cal. Civ. C. Sec. 2021; Field Civ. C. Sec. 1043; re-en. Sec. 7803, R.C.M. 1935; R.C.M. 1947, 2-111.**

**Cross-References**

Powers and duties of notary public, Title 1, ch. 5, part 6.
U.C.C. — negotiable instruments, Title 30, ch. 3.
U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Servant to pay over without demand, 39-2-605.

## Part 4
## Authority of Agent

**Part Cross-References**

Breach of warranty of agent's authority, 27-1-313.
Warranty of authority, 28-10-701.
Obedience required from factor, 30-11-602.
Partner as agent of partnership — restrictions on partner's authority, 35-10-301.
Members of grazing district as agents, 76-16-302.

**28-10-401. What authority agent has.** An agent has the authority that the principal actually or ostensibly confers upon the agent.

**History: En. Sec. 3091, Civ. C. 1895; re-en. Sec. 5430, Rev. C. 1907; re-en. Sec. 7945, R.C.M. 1921; Cal. Civ. C. Sec. 2315; Field Civ. C. Sec. 1233; re-en. Sec. 7945, R.C.M. 1935; R.C.M. 1947, 2-122; amd. Sec. 796, Ch. 56, L. 2009.**

**Cross-References**

Actual versus ostensible agency, 28-10-103.
What acts agent may perform, 28-10-105.
Agent not to exceed actual authority, 28-10-301.
Warranty of authority, 28-10-701.
Authority of factor, 30-11-606.

**28-10-402. Actual authority defined.** Actual authority is authority that the principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe that the agent possesses.

**History: En. Sec. 3092, Civ. C. 1895; re-en. Sec. 5431, Rev. C. 1907; re-en. Sec. 7946, R.C.M. 1921; Cal. Civ. C. Sec. 2316; Field Civ. C. Sec. 1234; re-en. Sec. 7946, R.C.M. 1935; R.C.M. 1947, 2-123; amd. Sec. 797, Ch. 56, L. 2009.**

**Cross-References**

Actual versus ostensible agency, 28-10-103.
Authority of factor, 30-11-606.

**28-10-403. Ostensible authority defined.** Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

**History: En. Sec. 3093, Civ. C. 1895; re-en. Sec. 5432, Rev. C. 1907; re-en. Sec. 7947, R.C.M. 1921; Cal. Civ. C. Sec. 2317; Field Civ. C. Sec. 1235; re-en. Sec. 7947, R.C.M. 1935; R.C.M. 1947, 2-124.**

**Cross-References**

Actual versus ostensible agency, 28-10-103.
Ostensible authority, 30-11-607.

**28-10-404. When and as to whom agent's authority restricted.** Every agent has the authority as described by Title 30, chapter 11, parts 5 and 6, and this chapter unless specially deprived of that authority by the agent's principal and has even then the statutorily described authority ostensibly except as to persons who have actual or constructive notice of the restriction upon the agent's authority.

**History: En. Sec. 3094, Civ. C. 1895; re-en. Sec. 5433, Rev. C. 1907; re-en. Sec. 7948, R.C.M. 1921; Cal. Civ. C. Sec. 2318; Field Civ. C. Sec. 1236; re-en. Sec. 7948, R.C.M. 1935; R.C.M. 1947, 2-125; amd. Sec. 31, Ch. 117, L. 1979; amd. Sec. 798, Ch. 56, L. 2009.**

**Cross-References**

Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

**28-10-405. Implied powers of agent.** An agent has authority to:

(1) do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of the agency; and

(2) make a representation respecting any matter of fact, except the terms of the agent's authority, upon which the right to use the agent's authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

**History:** En. Sec. 3095, Civ. C. 1895; re-en. Sec. 5434, Rev. C. 1907; re-en. Sec. 7949, R.C.M. 1921; Cal. Civ. C. Sec. 2319; Field Civ. C. Sec. 1237; re-en. Sec. 7949, R.C.M. 1935; R.C.M. 1947, 2-126; amd. Sec. 32, Ch. 117, L. 1979; amd. Sec. 799, Ch. 56, L. 2009.

**Cross-References**

What acts agent may perform, 28-10-105.
Auctioneer's authority from seller, 30-11-506.
Auctioneer's authority from bidder, 30-11-507.
Authority of factor, 30-11-606.

**28-10-406. Interpretation of authority given partly in general and partly in specific terms.** When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

**History:** En. Sec. 3097, Civ. C. 1895; re-en. Sec. 5436, Rev. C. 1907; re-en. Sec. 7951, R.C.M. 1921; Cal. Civ. C. Sec. 2321; Field Civ. C. Sec. 1239; re-en. Sec. 7951, R.C.M. 1935; R.C.M. 1947, 2-128.

**Cross-References**

What acts agent may perform, 28-10-105.

**28-10-407. Statutory exceptions to general authority.** An authority expressed in general terms, however broad, does not authorize an agent to:

(1) act in the agent's own name unless it is the usual course of business to do so;
(2) define the scope of the agency; or
(3) do any act that a trustee is forbidden to do by Title 72, chapter 38.

**History:** En. Sec. 3098, Civ. C. 1895; re-en. Sec. 5437, Rev. C. 1907; re-en. Sec. 7952, R.C.M. 1921; Cal. Civ. C. Sec. 2322; Field Civ. C. Sec. 1240; re-en. Sec. 7952, R.C.M. 1935; R.C.M. 1947, 2-129; amd. Sec. 800, Ch. 56, L. 2009.

**Cross-References**

What acts agent may perform, 28-10-105.
Agent not to exceed actual authority, 28-10-301.
What authority agent has, 28-10-401.
Auctioneer's authority from seller, 30-11-506.
Authority of factor, 30-11-606.
Partner as agent of partnership — restrictions on partner's authority, 35-10-301.

**28-10-408. When agent may disobey instructions.** An agent has power to disobey instructions in dealing with the subject of the agency in cases in which it is clearly for the interest of the agent's principal that the agent should do so and there is insufficient time to communicate with the principal.

**History:** En. Sec. 3096, Civ. C. 1895; re-en. Sec. 5435, Rev. C. 1907; re-en. Sec. 7950, R.C.M. 1921; Cal. Civ. C. Sec. 2320; Field Civ. C. Sec. 1238; re-en. Sec. 7950, R.C.M. 1935; R.C.M. 1947, 2-127; amd. Sec. 801, Ch. 56, L. 2009.

**Cross-References**

How agent's act ratified, 28-10-211.

**28-10-409. No authority to defraud principal.** An agent can never have authority, either actual or ostensible, to do an act that is and is known or suspected by the person with whom the agent deals to be a fraud upon the principal.

**History:** En. Sec. 3082, Civ. C. 1895; re-en. Sec. 5421, Rev. C. 1907; re-en. Sec. 7936, R.C.M. 1921; Cal. Civ. C. Sec. 2306; Field Civ. C. Sec. 1224; re-en. Sec. 7936, R.C.M. 1935; R.C.M. 1947, 2-113; amd. Sec. 802, Ch. 56, L. 2009.

**Cross-References**

Arrest of agent for misconduct, 27-16-102.
Principal's consent needed to relieve factor from liability, 30-11-605.

**28-10-410 through 28-10-420 reserved.**

**28-10-421. What included in authority to sell personal property.** An authority to sell personal property includes authority to warrant the title of the principal and the quantity and quality of the property.

**History:** En. Sec. 3099, Civ. C. 1895; re-en. Sec. 5438, Rev. C. 1907; re-en. Sec. 7953, R.C.M. 1921; Cal. Civ. C. Sec. 2323; Field Civ. C. Sec. 1241; re-en. Sec. 7953, R.C.M. 1935; R.C.M. 1947, 2-130.

**Cross-References**

Auctioneer's authority from seller, 30-11-506.

**28-10-422. What included in authority to sell real property.** An authority to sell and convey real property includes authority to give the usual covenants of warranty.

**History:** **En. Sec. 3100, Civ. C. 1895; re-en. Sec. 5439, Rev. C. 1907; re-en. Sec. 7954, R.C.M. 1921; Cal. Civ. C. Sec. 2324; Field Civ. C. Sec. 1242; re-en. Sec. 7954, R.C.M. 1935; R.C.M. 1947, 2-131.**

**Cross-References**

Authority to be in writing, 28-2-903.
Usual common-law covenants required by real property contracts — when, 30-11-109.
Contract for sale of real property, 30-11-111.
Covenants running with land, Title 70, ch. 17, part 2.

**28-10-423. Authority of agent to sell to receive price.** A general agent to sell who is entrusted by the principal with the possession of the thing sold has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

**History:** **En. Secs. 3101, 3102, Civ. C. 1895; re-en. Secs. 5440, 5441, Rev. C. 1907; re-en. Secs. 7955, 7956, R.C.M. 1921; Cal. Civ. C. Secs. 2325, 2326; Field Civ. C. Secs. 1243, 1244; re-en. Secs. 7955, 7956, R.C.M. 1935; R.C.M. 1947, 2-132, 2-133.**

**Cross-References**

Person in position of seller, 30-2-707.
Auctioneer's authority from seller, 30-11-506.
Factor defined, 30-11-601.
Servant to pay over without demand, 39-2-605.

## Part 5
## Subagents

**28-10-501. When agent may delegate powers.** An agent, unless specially forbidden by the principal to do so, can delegate the agent's powers to another person in any of the following cases and in no others:

(1) when the act to be done is purely mechanical;
(2) when the agent cannot and the subagent can lawfully perform the act;
(3) when it is the usage of the place to delegate the powers; or
(4) when the delegation is specially authorized by the principal.

**History:** **En. Sec. 3140, Civ. C. 1895; re-en. Sec. 5456, Rev. C. 1907; re-en. Sec. 7971, R.C.M. 1921; Cal. Civ. C. Sec. 2349; Field Civ. C. Sec. 1259; re-en. Sec. 7971, R.C.M. 1935; R.C.M. 1947, 2-301; amd. Sec. 803, Ch. 56, L. 2009.**

**Cross-References**

University system as agent, 17-2-102.
Auctioneer's assistant — who may act and when, 30-11-512.
Authority of factor, 30-11-606.

**28-10-502. Effect of unauthorized employment of subagent.** If an agent employs a subagent without authority, the agent is a principal and the subagent is the agent's agent and the principal of the agent has no connection with the subagent. A mere agent of an agent is not responsible as such to the principal of the agent.

**History:** **En. Secs. 2743, 3141, Civ. C. 1895; re-en. Secs. 5289, 5457, Rev. C. 1907; re-en. Secs. 7804, 7972, R.C.M. 1921; Cal. Civ. C. Secs. 2022, 2350; Field Civ. C. Secs. 1044, 1260; re-en. Secs. 7804, 7972, R.C.M. 1935; R.C.M. 1947, 2-112, 2-302; amd. Sec. 804, Ch. 56, L. 2009.**

**Cross-References**

When agent responsible to third persons as principal, 28-10-702.

**28-10-503. Effect of authorized employment of subagent.** A subagent lawfully appointed represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

**History:** **En. Sec. 3142, Civ. C. 1895; re-en. Sec. 5458, Rev. C. 1907; re-en. Sec. 7973, R.C.M. 1921; Cal. Civ. C. Sec. 2351; Field Civ. C. Sec. 1261; re-en. Sec. 7973, R.C.M. 1935; R.C.M. 1947, 2-303.**

**Cross-References**

Auctioneer's assistant — who may act and when, 30-11-512.
Authority of factor, 30-11-606.

## Part 6
## Rights and Liabilities of Principal

**Part Cross-References**

Rules determining rights and duties of partners, 35-10-401.

**28-10-601. Accrual of rights and liabilities to principal.** An agent represents the agent's principal for all purposes within the scope of the agent's actual or ostensible authority, and all the rights and liabilities that would accrue to the agent from transactions within that limit, if the transactions had been entered into on the agent's own account, accrue to the principal.

**History: En. Sec. 3110, Civ. C. 1895; re-en. Sec. 5442, Rev. C. 1907; re-en. Sec. 7957, R.C.M. 1921; Cal. Civ. C. Sec. 2330; Field Civ. C. Sec. 1245; re-en. Sec. 7957, R.C.M. 1935; R.C.M. 1947, 2-201; amd. Sec. 805, Ch. 56, L. 2009.**

**Cross-References**

What acts agent may perform, 28-10-105.
What authority agent has, 28-10-401.
Implied powers of agent, 28-10-405.
Signature by authorized representative, 30-3-403.
Rights acquired by due negotiation, 30-7-502.
Auctioneer's authority from seller, 30-11-506.
Authority of factor, 30-11-606.
Partnership liable for partner's wrongful act, 35-10-305.
Nature of partner's liability, 35-10-307.
Contract discharging employer liability for negligence void, 39-2-705.

**28-10-602. Principal's responsibility for agent's negligence, omissions, and wrongs.** (1) Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of the principal's agent in the transaction of the business of the agency, including wrongful acts committed by the agent in and as a part of the transaction of business, and for the agent's willful omission to fulfill the obligations of the principal.

(2) A principal is not responsible for other wrongs committed by the principal's agent except those mentioned in subsection (1) unless the principal has authorized or ratified the acts, even though they are committed while the agent is engaged in the principal's service.

**History: En. Secs. 3118, 3119, Civ. C. 1895; re-en. Secs. 5450, 5451, Rev. C. 1907; re-en. Secs. 7965, 7966, R.C.M. 1921; Cal. Civ. C. Secs. 2338, 2339; Field Civ. C. Secs. 1253, 1254; re-en. Secs. 7965, 7966, R.C.M. 1935; R.C.M. 1947, 2-209, 2-210; amd. Sec. 806, Ch. 56, L. 2009.**

**Cross-References**

Arrest of agent for misconduct, 27-16-102.
When agent responsible to third persons as principal, 28-10-702.
Partnership liable for partner's wrongful act, 35-10-305.
When servant may be discharged, 39-2-606.

**28-10-603. When instrument binds principal.** An instrument within the scope of an agent's authority by which an agent intends to bind the agent's principal does bind the principal if that intent is plainly inferable from the instrument itself.

**History: En. Sec. 3117, Civ. C. 1895; re-en. Sec. 5449, Rev. C. 1907; re-en. Sec. 7964, R.C.M. 1921; Cal. Civ. C. Sec. 2337; Field Civ. C. Sec. 1252; re-en. Sec. 7964, R.C.M. 1935; R.C.M. 1947, 2-208; amd. Sec. 807, Ch. 56, L. 2009.**

**Cross-References**

Authority of agent, Title 28, ch. 10, part 4.
Auctioneer's authority from seller, 30-11-506.
Authority of factor, 30-11-606.

**28-10-604. When notice to principal or agent is notice to the other.** As against a principal, both principal and agent are deemed to have notice of whatever either has notice of and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

**History: En. Sec. 3112, Civ. C. 1895; re-en. Sec. 5444, Rev. C. 1907; re-en. Sec. 7959, R.C.M. 1921; Cal. Civ. C. Sec. 2332; Field Civ. C. Sec. 1247; re-en. Sec. 7959, R.C.M. 1935; R.C.M. 1947, 2-203.**

**Cross-References**

Notice of dishonor, 30-3-508.
Obedience required from factor, 30-11-602.
Mining — defective locations good against persons with notice, 82-2-112.

**28-10-605. Extent to which principal bound when agent exceeds authority.** When an agent exceeds the agent's authority, the agent's principal is bound by the agent's authorized acts only so far as the authorized acts can be plainly separated from those that are unauthorized.

**History:** **En. Sec. 3113, Civ. C. 1895; re-en. Sec. 5445, Rev. C. 1907; re-en. Sec. 7960, R.C.M. 1921; Cal. Civ. C. Sec. 2333; Field Civ. C. Sec. 1248; re-en. Sec. 7960, R.C.M. 1935; R.C.M. 1947, 2-204; amd. Sec. 808, Ch. 56, L. 2009.**

**Cross-References**

Principal's consent needed to relieve factor from liability, 30-11-605.
Partnership liable for partner's wrongful act, 35-10-305.

**28-10-606. Extent to which principal bound by acts under ostensible authority.** A principal is bound by acts of the principal's agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith of the authority.

**History:** **En. Sec. 3114, Civ. C. 1895; re-en. Sec. 5446, Rev. C. 1907; re-en. Sec. 7961, R.C.M. 1921; Cal. Civ. C. Sec. 2334; Field Civ. C. Sec. 1249; re-en. Sec. 7961, R.C.M. 1935; R.C.M. 1947, 2-205; amd. Sec. 809, Ch. 56, L. 2009.**

**Cross-References**

Ostensible authority defined, 28-10-403.
Ostensible authority, 30-11-607.

**28-10-607. When principal bound by incomplete execution of authority.** A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

**History:** **En. Sec. 3111, Civ. C. 1895; re-en. Sec. 5443, Rev. C. 1907; re-en. Sec. 7958, R.C.M. 1921; Cal. Civ. C. Sec. 2331; Field Civ. C. Sec. 1246; re-en. Sec. 7958, R.C.M. 1935; R.C.M. 1947, 2-202.**

**Cross-References**

Interpretation of authority given partly in general and partly in specific terms, 28-10-406.

**28-10-608. Rights of person who deals with agent without knowledge of agency.** A person who deals with an agent without knowing or having reason to believe that the agent acts as an agent in the transaction may set off against any claim of the principal arising out of the transaction all claims that the person might have set off against the agent before notice of the agency.

**History:** **En. Sec. 3116, Civ. C. 1895; re-en. Sec. 5448, Rev. C. 1907; re-en. Sec. 7963, R.C.M. 1921; Cal. Civ. C. Sec. 2336; Field Civ. C. Sec. 1251; re-en. Sec. 7963, R.C.M. 1935; R.C.M. 1947, 2-207; amd. Sec. 810, Ch. 56, L. 2009.**

**Cross-References**

Principal's consent needed to relieve factor from liability, 30-11-605.

**28-10-609. Principal's liability when agent given exclusive credit.** If exclusive credit is given to an agent by the person dealing with the agent, the agent's principal is exonerated by payment or other satisfaction made by the principal to the agent in good faith before receiving notice of the creditor's election to hold the principal responsible.

**History:** **En. Sec. 3115, Civ. C. 1895; re-en. Sec. 5447, Rev. C. 1907; re-en. Sec. 7962, R.C.M. 1921; Cal. Civ. C. Sec. 2335; Field Civ. C. Sec. 1250; re-en. Sec. 7962, R.C.M. 1935; R.C.M. 1947, 2-206; amd. Sec. 811, Ch. 56, L. 2009.**

**Cross-References**

When agent responsible to third persons as principal, 28-10-702.
Sales on credit, 30-11-603.
Nature of partner's liability, 35-10-307.

## Part 7
## Agent's Responsibility to Third Persons

**28-10-701. Warranty of authority.** A person who assumes to act as an agent warrants to all who deal with the person in that capacity that the person has the authority that the person assumes.

**History:** **En. Sec. 3130, Civ. C. 1895; re-en. Sec. 5452, Rev. C. 1907; re-en. Sec. 7967, R.C.M. 1921; Cal. Civ. C. Sec. 2342; Field Civ. C. Sec. 1255; re-en. Sec. 7967, R.C.M. 1935; R.C.M. 1947, 2-211; amd. Sec. 812, Ch. 56, L. 2009.**

**Cross-References**

Breach of warranty of agent's authority, 27-1-313.
What included in authority to sell personal property, 28-10-421.

What included in authority to sell real property, 28-10-422.
Auctioneer's authority from seller, 30-11-506.
Authority of factor, 30-11-606.

**28-10-702. When agent responsible to third persons as principal.** A person who assumes to act as an agent is responsible to third persons as a principal for acts in the course of the agency in any of the following cases and in no other:

(1) when, with the agent's consent, credit is given to the agent personally in a transaction;

(2) when the agent enters into a written contract in the name of the principal without believing in good faith that the agent has authority to do so; or

(3) when the agent's acts are wrongful in their nature.

**History: En. Sec. 3131, Civ. C. 1895; re-en. Sec. 5453, Rev. C. 1907; re-en. Sec. 7968, R.C.M. 1921; Cal. Civ. C. Sec. 2343; Field Civ. C. Sec. 1256; re-en. Sec. 7968, R.C.M. 1935; R.C.M. 1947, 2-212; amd. Sec. 813, Ch. 56, L. 2009.**

**Cross-References**

When written authority necessary, 28-10-203.
Effect of unauthorized employment of subagent, 28-10-502.
Principal's responsibility for agent's negligence, omissions, and wrongs, 28-10-602.
Conversion of instrument — innocent representative, 30-3-419.
Liability of factor under guaranty commission, 30-11-604.
Persons responsible for unfair trade practices, 30-14-203.

**28-10-703. Responsibility of agent when third person claims property received for principal.** If an agent receives anything for the benefit of the agent's principal that another person is entitled to possess, the agent shall, on demand, surrender it to the person, or so much of it as the agent has under the agent's control at the time of demand, on being indemnified for any advance that the agent has made to the principal, in good faith, on account of the advance. The agent is responsible for the thing of benefit if, after demand, the agent delivers it to the principal.

**History: En. Sec. 3132, Civ. C. 1895; re-en. Sec. 5454, Rev. C. 1907; re-en. Sec. 7969, R.C.M. 1921; Cal. Civ. C. Sec. 2344; Field Civ. C. Sec. 1257; re-en. Sec. 7969, R.C.M. 1935; R.C.M. 1947, 2-213; amd. Sec. 33, Ch. 117, L. 1979; amd. Sec. 814, Ch. 56, L. 2009.**

**Cross-References**

Auctioneer's authority from seller, 30-11-506.
Principal's consent needed to relieve factor from liability, 30-11-605.
Servant to pay over without demand, 39-2-605.

**28-10-704. Applicability of laws relating to capacity to contract.** The provisions of this part are subject to the provisions of chapter 2, part 2; 28-10-104; and Title 41, chapter 1.

**History: En. Sec. 3133, Civ. C. 1895; re-en. Sec. 5455, Rev. C. 1907; re-en. Sec. 7970, R.C.M. 1921; Cal. Civ. C. Sec. 2345; Field Civ. C. Sec. 1258; re-en. Sec. 7970, R.C.M. 1935; R.C.M. 1947, 2-214; amd. Sec. 34, Ch. 117, L. 1979.**

## Part 8
## Termination of Agency

**28-10-801. Circumstances that terminate agency.** An agency is terminated as to every person having notice of the termination by:

(1) the expiration of the agency's term;
(2) the extinction of the agency' subject;
(3) the death of the agent;
(4) the agent's renunciation of the agency; or
(5) the incapacity of the agent to act as an agent.

**History: En. Sec. 3150, Civ. C. 1895; re-en. Sec. 5459, Rev. C. 1907; re-en. Sec. 7974, R.C.M. 1921; Cal. Civ. C. Sec. 2355; Field Civ. C. Sec. 1262; re-en. Sec. 7974, R.C.M. 1935; R.C.M. 1947, 2-304; amd. Sec. 815, Ch. 56, L. 2009.**

**Cross-References**

Termination of employment, Title 39, ch. 2, part 5.
When servant may be discharged, 39-2-606.

**28-10-802. Circumstances that terminate agency not coupled with interest.** Unless the power of the agent is coupled with an interest in the subject of the agency, the agency is terminated as to every person having notice of the termination by:

(1) its revocation by the principal;

(2) the principal's death; or
(3) the principal's incapacity to contract.

**History:** **En. Sec. 3151, Civ. C. 1895; re-en. Sec. 5460, Rev. C. 1907; re-en. Sec. 7975, R.C.M. 1921; Cal. Civ. C. Sec. 2356; Field Civ. C. Sec. 1263; re-en. Sec. 7975, R.C.M. 1935; R.C.M. 1947, 2-305; amd. Sec. 816, Ch. 56, L. 2009.**

**Cross-References**

Who may contract, 28-2-201.

# CHAPTER 11
# GUARANTY, INDEMNITY, AND SURETYSHIP

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28-11-417. Surety's right to reimbursement and contribution.
28-11-418. Surety entitled to benefit of security held by creditor or cosurety.
28-11-419. Creditor entitled to benefit of security held by surety.
28-11-420. Principal's property to be taken first.

**Chapter Cross-References**

Public contracts — bid security, Title 18, ch. 1, part 2.
Civil liability, Title 27, ch. 1.
Insurance guaranty associations, Title 33, ch. 10.

## Part 1
## Guaranty — General Provisions

**Part Cross-References**

Contract of accommodation party — negotiable instruments, 30-3-415.
Insurance guaranty associations, Title 33, ch. 10.

**28-11-101. Guaranty defined.** A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

**History: En. Sec. 3600, Civ. C. 1895; re-en. Sec. 5656, Rev. C. 1907; re-en. Sec. 8171, R.C.M. 1921; Cal. Civ. C. Sec. 2787; Field Civ. C. Sec. 1534; re-en. Sec. 8171, R.C.M. 1935; R.C.M. 1947, 30-101.**

**Cross-References**

Indemnity, Title 28, ch. 11, part 3.
Suretyship, Title 28, ch. 11, part 4.

**28-11-102. Knowledge or consent of principal not required.** A person may become guarantor even without the knowledge or consent of the principal.

**History: En. Sec. 3601, Civ. C. 1895; re-en. Sec. 5657, Rev. C. 1907; re-en. Sec. 8172, R.C.M. 1921; Cal. Civ. C. Sec. 2788; Field Civ. C. Sec. 1535; re-en. Sec. 8172, R.C.M. 1935; R.C.M. 1947, 30-102.**

**Cross-References**

Consideration, Title 28, ch. 2, part 8.

**28-11-103. When separate consideration required.** When a guaranty is entered into at the same time with the original obligation or with the acceptance of the original obligation by the person making the guaranty and forms with that original obligation a part of the consideration to the person, no other consideration need exist. In all other cases, there must be a consideration distinct from that of the original obligation.

**History: En. Sec. 3610, Civ. C. 1895; re-en. Sec. 5658, Rev. C. 1907; re-en. Sec. 8173, R.C.M. 1921; Cal. Civ. C. Sec. 2792; Field Civ. C. Sec. 1536; re-en. Sec. 8173, R.C.M. 1935; R.C.M. 1947, 30-103; amd. Sec. 817, Ch. 56, L. 2009.**

**Cross-References**

Consideration, Title 28, ch. 2, part 8.

**28-11-104. Guaranty generally to be in writing — form.** Except as prescribed by 28-11-105, a guaranty must be in writing and signed by the guarantor, but the writing need not express a consideration.

**History: En. Sec. 3611, Civ. C. 1895; re-en. Sec. 5659, Rev. C. 1907; re-en. Sec. 8174, R.C.M. 1921; Cal. Civ. C. Sec. 2793; Field Civ. C. Sec. 1537; re-en. Sec. 8174, R.C.M. 1935; R.C.M. 1947, 30-104.**

**Cross-References**

What contracts must be in writing, 28-2-903.

**28-11-105. When guaranty considered original obligation and need not be in writing.** A promise to answer for the obligation of another in any of the following cases is considered an original obligation of the promisor and need not be in writing:

(1) when the promise is made by one who has received property of another upon an undertaking to apply the property pursuant to the promise or by one who has received a discharge from an obligation, in whole or in part, in consideration of the promise;

(2) when the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances that render the party making the promise the principal debtor and the person in whose behalf the promise is made the party's surety;

(3) when the promise, being for an antecedent obligation of another, is made upon a consideration:

(a) that the party receiving the promise cancels the antecedent obligation, accepting the new promise as a substitute for the antecedent obligation;

(b) that the party receiving the promise releases the property of another from a levy; or

(c) beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person;

(4) when a factor undertakes to sell merchandise for a commission and guarantee the sale;

(5) when the holder of an instrument for the payment of money upon which a third person is or may become liable to the holder transfers the instrument in payment of a precedent debt of the holder's own or for a new consideration and in connection with the transfer enters into a promise respecting the instrument.

**History:** **En. Sec. 3612, Civ. C. 1895; re-en. Sec. 5660, Rev. C. 1907; re-en. Sec. 8175, R.C.M. 1921; Cal. Civ. C. Sec. 2794; Field Civ. C. Sec. 1538; re-en. Sec. 8175, R.C.M. 1935; R.C.M. 1947, 30-105; amd. Sec. 818, Ch. 56, L. 2009.**

**Cross-References**

When contracts may be oral, 28-2-901.
What contracts must be in writing, 28-2-903.
Liability of factor under guaranty commission, 30-11-604.
Assignments for benefit of creditors, Title 31, ch. 2, part 2.

**28-11-106. When notice of acceptance necessary to bind guarantor.** A mere offer of guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor, but an absolute guaranty is binding upon the guarantor without notice of acceptance.

**History:** **En. Sec. 3613, Civ. C. 1895; re-en. Sec. 5661, Rev. C. 1907; re-en. Sec. 8176, R.C.M. 1921; Cal. Civ. C. Sec. 2795; Field Civ. C. Sec. 1539; re-en. Sec. 8176, R.C.M. 1935; amd. Sec. 6, Ch. 185, L. 1977; R.C.M. 1947, 30-106.**

**Cross-References**

Construction of terms of notice, 1-4-108.

**28-11-107. When guaranty considered unconditional.** A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

**History:** **En. Sec. 3630, Civ. C. 1895; re-en. Sec. 5666, Rev. C. 1907; re-en. Sec. 8181, R.C.M. 1921; Cal. Civ. C. Sec. 2806; Field Civ. C. Sec. 1544; re-en. Sec. 8181, R.C.M. 1935; R.C.M. 1947, 30-201.**

**Cross-References**

Condition precedent defined, 28-1-403.
Acceptance to be absolute, 28-2-504.
Liability upon guaranty of conditional obligation — notice of default, 28-11-206.

**28-11-108. Continuing guaranty — definition — revocation.** (1) A guaranty relating to a future liability of the principal under successive transactions that either continue the principal's liability or from time to time renew it after it has been satisfied is called a continuing guaranty.

(2) A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to the transactions that the guarantor does not renounce.

**History:** **En. Secs. 3640, 3641, Civ. C. 1895; re-en. Secs. 5671, 5672, Rev. C. 1907; re-en. Secs. 8186, 8187, R.C.M. 1921; Cal. Civ. C. Secs. 2814, 2815; Field Civ. C. Secs. 1549, 1550; re-en. Secs. 8186, 8187, R.C.M. 1935; R.C.M. 1947, 30-206, 30-207; amd. Sec. 819, Ch. 56, L. 2009.**

**Cross-References**

Consideration, Title 28, ch. 2, part 8.

## Part 2
## Guaranty — Liability and Exoneration of Guarantor

**Part Cross-References**

Liability for nonreceipt or misdescription of goods, 30-7-301.
Liability of factor under guaranty commission, 30-11-604.

**28-11-201. Obligation of guarantor not to exceed that of principal.** The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal, and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

**History:** **En. Sec. 3633, Civ. C. 1895; re-en. Sec. 5669, Rev. C. 1907; re-en. Sec. 8184, R.C.M. 1921; Cal. Civ. C. Sec. 2809; Field Civ. C. Sec. 1547; re-en. Sec. 8184, R.C.M. 1935; R.C.M. 1947, 30-204.**

**Cross-References**

Knowledge or consent of principal not required, 28-11-102.

**28-11-202. Liability under guaranty of incomplete contract.** In a guaranty of a contract the terms of which are not then settled, it is implied that the guaranty's terms will not expose the guarantor to greater risks than the guarantor would incur under those terms that are most common in similar contracts at the place where the principal contract is to be performed.

**History: En. Sec. 3620, Civ. C. 1895; re-en. Sec. 5662, Rev. C. 1907; re-en. Sec. 8177, R.C.M. 1921; Cal. Civ. C. Sec. 2799; Field. Civ. C. Sec. 1540; re-en. Sec. 8177, R.C.M. 1935; R.C.M. 1947, 30-107; amd. Sec. 820, Ch. 56, L. 2009.**

**Cross-References**

Interpretation of language according to usage in place of execution, 1-4-106.
What law and usage to govern interpretation, 28-3-102.

**28-11-203. Liability under guaranty of illegal contract or contract void against principal.** A guarantor is not liable if the contract of the principal is unlawful, but the guarantor is liable notwithstanding any mere personal disability of the principal, even though the disability would make the contract void against the principal.

**History: En. Sec. 3634, Civ. C. 1895; re-en. Sec. 5670, Rev. C. 1907; re-en. Sec. 8185, R.C.M. 1921; Cal. Civ. C. Sec. 2810; Field Civ. C. Sec. 1548; re-en. Sec. 8185, R.C.M. 1935; R.C.M. 1947, 30-205; amd. Sec. 821, Ch. 56, L. 2009.**

**Cross-References**

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Illegal objects and provisions, Title 28, ch. 2, part 7.

**28-11-204. Liability under guaranty that obligation is good or collectible.** (1) A guaranty to the effect that an obligation is good or is collectible imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings if taken with reasonable diligence.

(2) A guaranty such as is mentioned in subsection (1) is not discharged by an omission to take proceedings upon the principal debt or upon any collateral security for its payment if no part of the debt could have been collected thereby.

(3) In the case mentioned in subsection (1), the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

**History: En. Secs. 3621, 3622, 3623, Civ. C. 1895; re-en. Secs. 5663, 5664, 5665, Rev. C. 1907; re-en. Secs. 8178, 8179, 8180, R.C.M. 1921; Cal. Civ. C. Secs. 2800, 2801, 2802; Field Civ. C. Secs. 1541, 1542, 1543; re-en. Secs. 8178, 8179, 8180, R.C.M. 1935; R.C.M. 1947, 30-108, 30-109, 30-110.**

**Cross-References**

Prejudgment attachment, Title 27, ch. 18.
Enforcement of contracts, Title 28, ch. 2, part 15.
Insolvency — what constitutes, 31-2-202.

**28-11-205. When guarantor of payment or performance becomes liable.** A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and without demand or notice.

**History: En. Sec. 3631, Civ. C. 1895; re-en. Sec. 5667, Rev. C. 1907; re-en. Sec. 8182, R.C.M. 1921; Cal. Civ. C. Sec. 2807; Field Civ. C. Sec. 1545; re-en. Sec. 8182, R.C.M. 1935; R.C.M. 1947, 30-202.**

**Cross-References**

Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.
Debtor and creditor relationships, Title 31, ch. 2.

**28-11-206. Liability upon guaranty of conditional obligation — notice of default.** If a person guarantees a conditional obligation, the person's liability is commensurate with that of the principal and the person is not entitled to notice of the default of the principal unless the person is unable, by the exercise of reasonable diligence, to acquire information of the default and the creditor has actual notice of the default.

**History: En. Sec. 3632, Civ. C. 1895; re-en. Sec. 5668, Rev. C. 1907; re-en. Sec. 8183, R.C.M. 1921; Cal. Civ. C. Sec. 2808; Field Civ. C. Sec 1546; re-en. Sec. 8183, R.C.M. 1935; R.C.M. 1947, 30-203; amd. Sec. 822, Ch. 56, L. 2009.**

**Cross-References**

Notice — actual and constructive, 1-1-217.
Illegality of agreement to allow another person to confess judgment, accept service of process, or accept default, 28-2-709.
When guaranty considered unconditional, 28-11-107.
Creditor defined, 31-2-102.

**28-11-207 through 28-11-210 reserved.**

**28-11-211. When guarantor exonerated.** (1) A guarantor is exonerated, except so far as the guarantor may be indemnified by the principal, if by any act of the creditor not authorized by the original guaranty instrument or without the separate consent of the guarantor, the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect to the original obligation are in any way impaired or suspended.

(2) A promise by a creditor that for any cause is void or voidable by the creditor at the creditor's option does not alter the obligation or suspend or impair the remedy within the meaning of subsection (1).

**History: En. Secs. 3650, 3651, Civ. C. 1895; re-en. Secs. 5673, 5674, Rev. C. 1907; re-en. Secs. 8188, 8189, R.C.M. 1921; Cal. Civ. C. Secs. 2819, 2820; Field Civ. C. Secs. 1551, 1552; re-en. Secs. 8188, 8189, R.C.M. 1935; R.C.M. 1947, 30-208, 30-209; amd. Sec. 823, Ch. 56, L. 2009; amd. Sec. 1, Ch. 168, L. 2021.**

**Cross-References**

Contracts in restraint of trade generally void, 28-2-703.
What conditions void, 28-2-707.
Restraints upon legal proceedings void, 28-2-708.
Indemnity, Title 28, ch. 11, part 3.
Exoneration of surety, 28-11-412.
Contracts of debtor valid, 31-2-103.

**28-11-212. Rescission of alteration — liability not restored.** The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor does not restore the liability of a guarantor who has been exonerated by such agreement.

**History: En. Sec. 3652, Civ. C. 1895; re-en. Sec. 5675, Rev. C. 1907; re-en. Sec. 8190, R.C.M. 1921; Cal. Civ. C. Sec. 2821; Field Civ. C. Sec. 1553; re-en. Sec. 8190, R.C.M. 1935; R.C.M. 1947, 30-210.**

**Cross-References**

Modification of contracts, Title 28, ch. 2, part 16.
Extinction of contracts — rescission, Title 28, ch. 2, part 17.
Assignments for benefit of creditors, Title 31, ch. 2, part 2.

**28-11-213. Guarantor not exonerated by delay of creditor.** Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor.

**History: En. Sec. 3654, Civ. C. 1895; re-en. Sec. 5677, Rev. C. 1907; re-en. Sec. 8192, R.C.M. 1921; Cal. Civ. C. Sec. 2823; Field Civ. C. Sec. 1555; re-en. Sec. 8192, R.C.M. 1935; R.C.M. 1947, 30-212.**

**Cross-References**

Restraints upon legal proceedings void, 28-2-708.

**28-11-214. Guarantor not exonerated by discharge of principal.** A guarantor is not exonerated by the discharge of the guarantor's principal by operation of law without the intervention or omission of the creditor.

**History: En. Sec. 3656, Civ. C. 1895; re-en. Sec. 5679, Rev. C. 1907; re-en. Sec. 8194, R.C.M. 1921; Cal. Civ. C. Sec. 2825; Field Civ. C. Sec. 1557; re-en. Sec. 8194, R.C.M. 1935; R.C.M. 1947, 30-214; amd. Sec. 824, Ch. 56, L. 2009.**

**28-11-215. Exoneration of guarantor indemnified by principal.** A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

**History: En. Sec. 3655, Civ. C. 1895; re-en. Sec. 5678, Rev. C. 1907; re-en. Sec. 8193, R.C.M. 1921; Cal. Civ. C. Sec. 2824; Field Civ. C. Sec. 1556; re-en. Sec. 8193, R.C.M. 1935; R.C.M. 1947, 30-213.**

**Cross-References**

Release of debtor by creditor, Title 28, ch. 1, part 16.
Indemnity, Title 28, ch. 11, part 3.

**28-11-216. Effect of part performance on guarantor's liability.** The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal but does not otherwise affect it.

**History: En. Sec. 3653, Civ. C. 1895; re-en. Sec. 5676, Rev. C. 1907; re-en. Sec. 8191, R.C.M. 1921; Cal. Civ. C. Sec. 2822; Field Civ. C. Sec. 1554; re-en. Sec. 8191, R.C.M. 1935; R.C.M. 1947, 30-211.**

**Cross-References**

When partial performance extinguishes part of obligation, 28-1-1105.
Offer of partial performance ineffective, 28-1-1203.
When part performance extinguishes obligation, 28-1-1403.

## Part 3
## Indemnity

**Part Cross-References**

Indemnity for retention of agency money, 17-2-202.
When no indemnity required in issuing duplicate warrant, 17-8-306.
Indemnity for inaccuracies in bills of lading, 30-7-301.
Powers of religious corporations sole — indemnity, 35-3-205(14).
Depositor to indemnify depositary, 70-6-210.

**28-11-301. Indemnity defined.** Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person.

**History: En. Sec. 3580, Civ. C. 1895; re-en. Sec. 5648, Rev. C. 1907; re-en. Sec. 8163, R.C.M. 1921; Cal. Civ. C. Sec. 2772; Field Civ. C. Sec. 1524; re-en. Sec. 8163, R.C.M. 1935; R.C.M. 1947, 30-301.**

**Cross-References**

Guaranty defined, 28-11-101.

**28-11-302. Indemnity for future unlawful act void.** An agreement to indemnify a person against an act thereafter to be done is void if the act be known by such person, at the time of doing it, to be unlawful.

**History: En. Sec. 3581, Civ. C. 1895; re-en. Sec. 5649, Rev. C. 1907; re-en. Sec. 8164, R.C.M. 1921; Cal. Civ. C. Sec. 2773; Field Civ. C. Sec. 1525; re-en. Sec. 8164, R.C.M. 1935; R.C.M. 1947, 30-302.**

**Cross-References**

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.

**28-11-303. Indemnity for past wrongful act valid.** An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

**History: En. Sec. 3582, Civ. C. 1895; re-en. Sec. 5650, Rev. C. 1907; re-en. Sec. 8165, R.C.M. 1921; Cal. Civ. C. Sec. 2774; Field Civ. C. Sec. 1526; re-en. Sec. 8165, R.C.M. 1935; R.C.M. 1947, 30-303.**

**Cross-References**

Classification of offenses, 45-1-201.
Felony defined, 45-2-101.

**28-11-304. Indemnity extended to acts of agents.** An agreement to indemnify against the acts of a certain person applies not only to the person's acts and their consequences but also to those of the person's agents.

**History: En. Sec. 3583, Civ. C. 1895; re-en. Sec. 5651, Rev. C. 1907; re-en. Sec. 8166, R.C.M. 1921; Cal. Civ. C. Sec. 2775; Field Civ. C. Sec. 1527; re-en. Sec. 8166, R.C.M. 1935; R.C.M. 1947, 30-304; amd. Sec. 825, Ch. 56, L. 2009.**

**Cross-References**

Accrual of rights and liabilities to principal, 28-10-601.
Exoneration of guarantor indemnified by principal, 28-11-215.
Authority of factor, 30-11-606.
Indemnification of employee, 39-2-701.
Liability of assisted entity for obligation resulting from assistance, 44-11-102.

**28-11-305. Indemnification of several persons.** An agreement to indemnify several persons applies to each unless a contrary intention appears.

**History: En. Sec. 3584, Civ. C. 1895; re-en. Sec. 5652, Rev. C. 1907; re-en. Sec. 8167, R.C.M. 1921; Cal. Civ. C. Sec. 2776; Field Civ. C. Sec. 1528; re-en. Sec. 8167, R.C.M. 1935; R.C.M. 1947, 30-305.**

**Cross-References**

Indemnity of partners, 35-10-401.
Indemnification of employee, 39-2-701.

**28-11-306 through 28-11-310 reserved.**

**28-11-311.** *(Temporary)* **Person indemnifying liable jointly and severally.** Except as provided in 27-1-703, one who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act. *(Terminates on occurrence of contingency—sec. 11(2), Ch. 429, L. 1997.)*

**28-11-311.** *(Effective on occurrence of contingency)* **Person indemnifying liable jointly and severally.** Except as may be otherwise provided in 27-1-703 and 27-1-705, a person who indemnifies another person against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by the act.

**History:** En. Sec. 3585, Civ. C. 1895; re-en. Sec. 5653, Rev. C. 1907; re-en. Sec. 8168, R.C.M. 1921; Cal. Civ. C. Sec. 2777; Field Civ. C. Sec. 1529; re-en. Sec. 8168, R.C.M. 1935; R.C.M. 1947, 30-306; amd. Sec. 5, Ch. 253, L. 1987; amd. Sec. 8, Ch. 429, L. 1997.

**Compiler's Comments**

*Contingent Applicability:* Section 10, Ch. 429, L. 1997, provided: "[This act] applies to causes of action that arise after [the effective date of this act]." Effective on occurrence of contingency.

*Contingent Effective Date:* Section 11(2), Ch. 429, L. 1997, provided that if House Bill No. 571 is passed and approved (approved April 18, 1997) and is invalidated or is found to be unconstitutional by the Montana Supreme Court, this act is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

**Cross-References**

Liability of joint debtors, Title 25, ch. 15.
Multiple defendants jointly and severally liable — right of contribution, 27-1-703.
Joint obligations, Title 28, ch. 1, part 3.
Indemnity for enforcement of agisters' lien, 71-3-1203.

**28-11-312. When person indemnifying entitled to reimbursement.** If a person at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, the person is entitled to be reimbursed in the same manner as a surety for whatever the person may pay.

**History:** En. Sec. 3587, Civ. C. 1895; re-en. Sec. 5655, Rev. C. 1907; re-en. Sec. 8170, R.C.M. 1921; Cal. Civ. C. Sec. 2779; Field Civ. C. Sec. 1531; re-en. Sec. 8170, R.C.M. 1935; R.C.M. 1947, 30-308; amd. Sec. 826, Ch. 56, L. 2009.

**Cross-References**

Liability of joint debtors, Title 25, ch. 15.
Right to contribution from joint debtors, 28-1-303.

**28-11-313. Interpretation of contract of indemnity.** In the interpretation of a contract of indemnity, the rules prescribed in 28-11-314 through 28-11-317 are to be applied unless a contrary intention appears.

**History:** En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(part).

**Cross-References**

Interpretation of instruments, Title 1, ch. 4, part 1.
Interpretation of contracts, Title 28, ch. 3.

**28-11-314. When and what person indemnified entitled to recover.** (1) Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

(2) Upon an indemnity against claims, demands, damages, or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

**History:** En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(1), (2).

**Cross-References**

When guarantor of payment or performance becomes liable, 28-11-205.

**28-11-315. Costs of defense.** An indemnity against claims, demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith and in the exercise of a reasonable discretion.

**History:** En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(3).

**Cross-References**

Costs, Title 25, ch. 10.

**28-11-316. Duty of person indemnifying to defend.** The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the person indemnified in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct defenses if the person indemnified chooses to do so. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the person indemnified suffered by the person indemnified in good faith is conclusive in favor of the person indemnified against the person indemnifying.

**History:** En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(4), (5); amd. Sec. 827, Ch. 56, L. 2009.

**28-11-317. When judgment not conclusive against person indemnifying.** (1) If the person indemnifying, whether the person is a principal or a surety in the agreement, does not have reasonable notice of the action or proceeding against the person indemnified or is not allowed to control the person indemnified's defense, judgment against the person indemnified is only presumptive evidence against the person indemnifying.

(2) A stipulation that a judgment against the person indemnified is conclusive upon the person indemnifying is inapplicable if the person indemnifying had a good defense upon the merits that by want of ordinary care the person indemnified failed to establish in the action.

**History: En. Sec. 3586, Civ. C. 1895; re-en. Sec. 5654, Rev. C. 1907; re-en. Sec. 8169, R.C.M. 1921; Cal. Civ. C. Sec. 2778; Field Civ. C. Sec. 1530; re-en. Sec. 8169, R.C.M. 1935; R.C.M. 1947, 30-307(6), (7); amd. Sec. 828, Ch. 56, L. 2009.**

**Cross-References**

Execution of judgment, Title 25, ch. 13.
Evidence — presumptions, Title 26, ch. 1, part 6.
Exoneration of guarantor indemnified by principal, 28-11-215.

## Part 4
## Suretyship

**Part Cross-References**

Security for deposits of public funds, 17-6-103.
Public contracts — bid security, Title 18, ch. 1, part 2.
Public construction contracts — bonding requirements, 18-2-201.
Security for costs — civil procedure, Title 25, ch. 10, part 6.
Justification of sureties, 25-33-203.
Qualifications of sureties — bail, 27-16-403.
Liability and exoneration of sureties — bail, Title 27, ch. 16, part 5.
Prejudgment attachment — exceptions to plaintiff's sureties, 27-18-715.
Prejudgment attachment — justification of sureties, 27-18-716.
Prejudgment attachment — defendant's undertaking — justification of sureties, 27-18-722.
Surety insurance, 33-1-211; Title 33, ch. 26.
Security for construction lien, 71-3-551.

**28-11-401. Surety defined.** A surety is one who, at the request of another person and for the purpose of securing to the other person a benefit, becomes responsible for the performance by the other person of some act in favor of a third person or pledges property as security for the performance.

**History: En. Sec. 3670, Civ. C. 1895; re-en. Sec. 5680, Rev. C. 1907; re-en. Sec. 8195, R.C.M. 1921; Cal. Civ. C. Sec. 2831; Field Civ. C. Sec. 1558; re-en. Sec. 8195, R.C.M. 1935; R.C.M. 1947, 30-401; amd. Sec. 829, Ch. 56, L. 2009.**

**Cross-References**

Guaranty defined, 28-11-101.
U.C.C. — general definitions — "surety", 30-1-201(40).

**28-11-402. When apparent principal may show surety.** A person who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that the person is in fact a surety except as against persons who have acted on the faith of the person's apparent character of principal.

**History: En. Sec. 3671, Civ. C. 1895; re-en. Sec. 5681, Rev. C. 1907; re-en. Sec. 8196, R.C.M. 1921; Cal. Civ. C. Sec. 2832; Field Civ. C. Sec. 1559; re-en. Sec. 8196, R.C.M. 1935; R.C.M. 1947, 30-402; amd. Sec. 830, Ch. 56, L. 2009.**

**Cross-References**

When agent responsible to third persons as principal, 28-10-702.
When guaranty considered original obligation and need not be in writing, 28-11-105.

**28-11-403. Interpretation of contract of suretyship.** In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

**History: En. Sec. 3681, Civ. C. 1895; re-en. Sec. 5683, Rev. C. 1907; re-en. Sec. 8198, R.C.M. 1921; Cal. Civ. C. Sec. 2837; Field Civ. C. Sec. 1561; re-en. Sec. 8198, R.C.M. 1935; R.C.M. 1947, 30-404.**

**Cross-References**

Interpretation of instruments, Title 1, ch. 4.
What rules govern interpretation of contracts and other obligations, 28-1-103.
Interpretation of contracts, Title 28, ch. 3.

**28-11-404. Suretyship unaffected by judgment against surety.** Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

**History:** En. Sec. 3682, Civ. C. 1895; re-en. Sec. 5684, Rev. C. 1907; re-en. Sec. 8199, R.C.M. 1921; Cal. Civ. C. Sec. 2838; Field Civ. C. Sec. 1562; re-en. Sec. 8199, R.C.M. 1935; R.C.M. 1947, 30-405.

**Cross-References**

Judgment, Title 25, ch. 9.
Principal bound when surety bound, 26-3-104.
When guarantor of payment or performance becomes liable, 28-11-205.

**28-11-405 through 28-11-410 reserved.**

**28-11-411. Extent of surety's liability.** A surety cannot be held beyond the express terms of the surety's contract, and if the contract prescribes a penalty for breach, the surety cannot in any case be liable for more than the penalty.

**History:** En. Sec. 3680, Civ. C. 1895; re-en. Sec. 5682, Rev. C. 1907; re-en. Sec. 8197, R.C.M. 1921; Cal. Civ. C. Sec. 2836; Field Civ. C. Sec. 1560; re-en. Sec. 8197, R.C.M. 1935; R.C.M. 1947, 30-403; amd. Sec. 831, Ch. 56, L. 2009.

**Cross-References**

Notification to surety by Legislative Auditor, 5-13-304.
Public contracts — bond requirements, Title 18, ch. 2, part 2.
Breach of contract, 27-1-311.
Obligation of guarantor not to exceed that of principal, 28-11-201.
Highway contracts — bidder's security, 60-2-113.

**28-11-412. Exoneration of surety.** A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which the surety is prejudiced by any act of the creditor that would naturally prove injurious to the remedies of the surety or inconsistent with the surety's rights or that lessens the surety's security; or

(3) to the extent to which the surety is prejudiced by an omission of the creditor, when required by the surety, to do anything that it is the creditor's duty to do.

**History:** En. Sec. 3684, Civ. C. 1895; re-en. Sec. 5686, Rev. C. 1907; re-en. Sec. 8201, R.C.M. 1921; Cal. Civ. C. Sec. 2840; Field Civ. Sec. 1564; re-en. Sec. 8201, R.C.M. 1935; amd. Sec. 8, Ch. 185, L. 1977; R.C.M. 1947, 30-407; amd. Sec. 832, Ch. 56, L. 2009.

**Cross-References**

Exoneration of guarantor, 28-11-211.

**28-11-413. Effect of performance or offer of performance on surety's liability.** Performance of the principal obligation or an offer of such performance, duly made as provided in this code, exonerates a surety.

**History:** En. Sec. 3683, Civ. C. 1895; re-en. Sec. 5685, Rev. C. 1907; re-en. Sec. 8200, R.C.M. 1921; Cal. Civ. C. Sec. 2839; Based on Field Civ. C. Sec. 1563; re-en. Sec. 8200, R.C.M. 1935; R.C.M. 1947, 30-406.

**Cross-References**

Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.
Effect of part performance on guarantor's liability, 28-11-216.

**28-11-414. Application to surety of rights of guarantor.** A surety has all the right of a guarantor, whether the surety becomes personally responsible or not.

**History:** En. Sec. 3690, Civ. C. 1895; re-en. Sec. 5687, Rev. C. 1907; re-en. Sec. 8202, R.C.M. 1921; Cal. Civ. C. Sec. 2844; Field Civ. C. Sec. 1565; re-en. Sec. 8202, R.C.M. 1935; R.C.M. 1947, 30-501; amd. Sec. 833, Ch. 56, L. 2009.

**Cross-References**

Guaranty, Title 28, ch. 11, parts 1 and 2.

**28-11-415. Power of surety to compel principal to perform.** A surety may compel the surety's principal to perform the obligations when due.

**History:** En. Sec. 3692, Civ. C. 1895; re-en. Sec. 5689, Rev. C. 1907; re-en. Sec. 8204, R.C.M. 1921; Cal. Civ. C. Sec. 2846; Field Civ. C. Sec. 1567; re-en. Sec. 8204, R.C.M. 1935; R.C.M. 1947, 30-503; amd. Sec. 834, Ch. 56, L. 2009.

**Cross-References**

When guarantor of payment or performance becomes liable, 28-11-205.

**28-11-416. When surety may require creditor to pursue remedy.** A surety may require the surety's creditor to proceed against the principal or to pursue any other remedy in the surety's power that the surety cannot pursue and that would lighten the surety's burden, and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is prejudiced.

**History: En. Sec. 3691, Civ. C. 1895; re-en. Sec. 5688, Rev. C. 1907; re-en. Sec. 8203, R.C.M. 1921; Cal. Civ. C. Sec. 2845; Field Civ. C. Sec. 1566; re-en. Sec. 8203, R.C.M. 1935; R.C.M. 1947, 30-502; amd. Sec. 835, Ch. 56, L. 2009.**

**Cross-References**

Guarantor not exonerated by discharge of principal, 28-11-214.

**28-11-417. Surety's right to reimbursement and contribution.** (1) If a surety satisfies the principal obligation or any part of the principal obligation, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety does not have a claim for reimbursement against other persons, even though they may have been benefited by the surety's act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy that the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all cosureties to contribute to the reimbursement without regard to the order of time in which they became cosureties.

**History: En. Secs. 3693, 3694, Civ. C. 1895; re-en. Secs. 5690, 5691, Rev. C. 1907; re-en. Secs. 8205, 8206, R.C.M. 1921; Cal. Civ. C. Secs. 2847, 2848; Field Civ. C. Secs. 1568, 1569; re-en. Secs. 8205, 8206, R.C.M. 1935; R.C.M. 1947, 30-504, 30-505; amd. Sec. 836, Ch. 56, L. 2009.**

**Cross-References**

Compelling contribution or repayment — joint debtor — surety, 25-13-104.

Subrogation of surety on appeal bond, 25-13-105.

**28-11-418. Surety entitled to benefit of security held by creditor or cosurety.** A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by the creditor or cosurety afterwards, whether the surety was aware of the security or not.

**History: En. Sec. 3695, Civ. C. 1895; re-en. Sec. 5692, Rev. C. 1907; re-en. Sec. 8207, R.C.M. 1921; Cal. Civ. C. Sec. 2849; Field Civ. C. Sec. 1570; re-en. Sec. 8207, R.C.M. 1935; R.C.M. 1947, 30-506; amd. Sec. 837, Ch. 56, L. 2009.**

**28-11-419. Creditor entitled to benefit of security held by surety.** A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

**History: En. Sec. 3700, Civ. C. 1895; re-en. Sec. 5694, Rev. C. 1907; re-en. Sec. 8209, R.C.M. 1921; Cal. Civ. C. Sec. 2854; Field Civ. C. Sec. 1572; re-en. Sec. 8209, R.C.M. 1935; R.C.M. 1947, 30-508.**

**28-11-420. Principal's property to be taken first.** Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

**History: En. Sec. 3696, Civ. C. 1895; re-en. Sec. 5693, Rev. C. 1907; re-en. Sec. 8208, R.C.M. 1921; Cal. Civ. C. Sec. 2850; Field Civ. C. Sec. 1571; re-en. Sec. 8208, R.C.M. 1935; R.C.M. 1947, 30-507.**

**Cross-References**

Guarantor not exonerated by discharge of principal, 28-11-214.

**28-11-416. When surety may require creditor to pursue remedy.** A surety may require the surety's creditor to proceed against the principal or to pursue any other remedy in the surety's power that the surety cannot pursue and that would lighten the surety's burden, and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is prejudiced.

History: En. Sec. 3691, Civ. C. 1895; re-en. Sec. 5688, Rev. C. 1907; re-en. Sec. 8203, R.C.M. 1921; Cal. Civ. C. Sec. 2845; Field Civ. C. Sec. 1566; re-en. Sec. 8203, R.C.M. 1935; R.C.M. 1947, 36-602; amd. Sec. 885, Ch. 56, L. 2009.

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

**28-11-417. Surety's right to reimbursement and contribution.** (1) If a surety satisfies the principal obligation or any part of the principal obligation, whether with or without legal proceedings, the principal is bound to reimburse what the surety has disbursed, including necessary costs and expenses, but the surety does not have a claim for reimbursement against other persons, even though they may have been benefited by the surety's act, except as prescribed by subsection (2).

(2) A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy that the creditor then has against the principal to the extent of reimbursing what the surety has expended and also to require all cosureties to contribute to the reimbursement without regard to the order of time in which they became cosureties.

History: En. Secs. 3693, 3694, Civ. C. 1895; re-en. Secs. 5690, 5691, Rev. C. 1907; re-en. Secs. 8205, 8206, R.C.M. 1921; Cal. Civ. C. Secs. 2847, 2848; Field Civ. C. Secs. 1568, 1569; re-en. Secs. 8205, 8206, R.C.M. 1935; R.C.M. 1947, 30-604, 30-605; amd. Sec. 886, Ch. 56, L. 2009.

Cross-References

Compelling contribution or repayment — joint debtor — surety, 25-13-104.

Subrogation of surety on appeal bond, 25-13-105.

**28-11-418. Surety entitled to benefit of security held by creditor or cosurety.** A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by the creditor or cosurety afterwards, whether the surety was aware of the security or not.

History: En. Sec. 3695, Civ. C. 1895; re-en. Sec. 5692, Rev. C. 1907; re-en. Sec. 8207, R.C.M. 1921; Cal. Civ. C. Sec. 2849; Field Civ. C. Sec. 1570; re-en. Sec. 8207, R.C.M. 1935; R.C.M. 1947, 30-606; amd. Sec. 887, Ch. 56, L. 2009.

**28-11-419. Creditor entitled to benefit of security held by surety.** A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

History: En. Sec. 3700, Civ. C. 1895; re-en. Sec. 5684, Rev. C. 1907; re-en. Sec. 8209, R.C.M. 1921; Cal. Civ. C. Sec. 2854; Field Civ. C. Sec. 1572; re-en. Sec. 8209, R.C.M. 1935; R.C.M. 1947, 30-608.

**28-11-420. Principal's property to be taken first.** Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

History: En. Sec. 3696, Civ. C. 1895; re-en. Sec. 5693, Rev. C. 1907; re-en. Sec. 8208, R.C.M. 1921; Cal. Civ. C. Sec. 2850; Field Civ. C. Sec. 1571; re-en. Sec. 8208, R.C.M. 1935; R.C.M. 1947, 30-607.

Cross-References

Guarantor not exonerated by discharge of principal, 28-11-214.

# TITLE 29

## RESERVED

# TITLE 30

## TRADE AND COMMERCE

Ch.
1. Uniform Commercial Code — General Provisions.
2. Uniform Commercial Code — Sales.
2A. Uniform Commercial Code — Leases
3. Uniform Commercial Code — Negotiable Instruments.
4. Uniform Commercial Code — Bank Deposits and Collections.
4A. Uniform Commercial Code — Funds Transfers
5. Uniform Commercial Code — Letters of Credit.
6. Uniform Commercial Code — Bulk Transfers. Repealed.
7. Uniform Commercial Code — Warehouse Receipts, Bills of Lading, and Other Documents of Title.
8. Uniform Commercial Code — Investment Securities.
9. Uniform Commercial Code — Secured Transactions. Renumbered and Repealed.
9A. Uniform Commercial Code — Secured Transactions
10. Securities Regulation.
11. Sales.
12. Weights, Measures, Standards, and Labeling.
12A. Uniform Commercial Code — Emerging Technologies
13. Assumed Business Names, Trademarks, and Related Rights.
14. Unfair Trade Practices and Consumer Protection.
15. Foreign-Trade Zones.
16. Small Business Licensing Coordination.
17. Electronic Directory of Montana Products.
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20. Firearms and Ammunition Made in Montana.
Chapter 21 reserved.
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# CHAPTER 1

## UNIFORM COMMERCIAL CODE GENERAL PROVISIONS

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## Part 1
## Short Title, Construction, Application, and Subject Matter of the Code

**30-1-101. Short titles — scope of chapter.** (1) Chapters 1 through 9A and 12A of this title may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9A and 12A of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

(3) This chapter may be cited as the Uniform Commercial Code—General Provisions.

(4) This chapter applies to a transaction to the extent that it is governed by chapters 2 through 5, 7, 8, 9A, and 12A of this title.

(5) Nothing in chapters 1 through 9A and 12A of this title may be construed to support, endorse, create, or implement a national digital currency.

**History: En. Sec. 1-101, Ch. 264, L. 1963; amd. Sec. 12, Ch. 265, L. 1977; R.C.M. 1947, 87A-1-101; amd. Sec. 1, Ch. 575, L. 2005; amd. Sec. 1, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-1-102. Purposes — rules of construction.** (1) This code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(a) to simplify, clarify, and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(2) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

**History: En. Sec. 1-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-102; amd. Sec. 2, Ch. 575, L. 2005.**

**30-1-103. Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

**History: En. Sec. 1-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-103.**

**Cross-References**

Contracts and Other Obligations, Title 28.
Debtor and creditor relationships, Title 31, ch. 2.
Uniform Fraudulent Transfer Act, Title 31, ch. 2, part 3.
Transfer of real property — fraudulent conveyances, Title 70, ch. 20, part 4.

**30-1-104. Construction against implicit repeal.** This code being a general code intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

**History: En. Sec. 1-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-104.**

**30-1-105. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History: En. Sec. 1-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-105; amd. Sec. 1, Ch. 402, L. 1983; amd. Sec. 1, Ch. 410, L. 1991; amd. Sec. 1, Ch. 536, L. 1997; amd. Sec. 129, Ch. 305, L. 1999; amd. Sec. 1, Ch. 179, L. 2001.**

**30-1-106. Remedies to be liberally administered.** (1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

**History:** **En. Sec. 1-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-106.**

**Cross-References**

GENERAL

Supplementary general principles of law applicable, 30-1-103.
Obligation of good faith, 30-1-203.
Formation in general, 30-2-204.
Remedies for breach of collateral contracts not impaired, 30-2-701.
Seller's resale including contract for resale, 30-2-706.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.

**30-1-107. Waiver or renunciation of claim or right after breach.** A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in a signed record.

**History:** **En. Sec. 1-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-107; amd. Sec. 3, Ch. 575, L. 2005; amd. Sec. 2, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Formal requirements — statute of frauds, 30-2-201.
Modification, rescission, and waiver, 30-2-209.
Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Aggrieved party, 30-1-201.
Rights, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

**30-1-108. Severability.** If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

**History:** **En. Sec. 1-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-108.**

**Cross-References**

DEFINITIONAL

Person, 30-1-201.

**30-1-109. Section captions.** Section captions are parts of this code.

**History:** **En. Sec. 1-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-109.**

**Cross-References**

Effect of Montana Code Annotated — official version, 1-11-103.

**30-1-110. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 10-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-102.**

**30-1-111. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 10-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-10-103.**

## Part 2
## General Definitions and Principles of Interpretation

**30-1-201. General definitions.** (1) Unless the context requires otherwise, words or phrases defined in this section, or in the additional definitions contained in other chapters of the code that apply to particular chapters or parts of chapters, have the meanings stated.

(2) Subject to additional definitions contained in other chapters of this code that apply to specific chapters or parts of chapters:

(a) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(b) "Aggrieved party" means a party entitled to pursue a remedy.

(c) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in 30-1-205.

(d) "Bank" means any person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(e) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security payable to bearer or endorsed in blank.

(f) (i) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods.

(ii) The term does not include a warehouse receipt.

(g) "Branch" includes a separately incorporated foreign branch of a bank.

(h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(i) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(j) "Conspicuous", with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is for decision by the court.

(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(l) "Contract" means the total legal obligation that results from the parties' agreement as affected by this code and as supplemented by any other applicable rules of law.

(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(n) "Defendant" includes a person in the position of defendant in a counterclaim or third-party claim.

(o) "Delivery" with respect to an electronic document of title means voluntary transfer of control and, with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

(p) (i) "Document of title" means a record:

(A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and

(B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(ii) The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium.

(q) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(r) "Fault" means wrongful act, omission, breach, or default.

(s) "Fungible goods" means:

(i) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(ii) goods which by agreement are treated as equivalent.

(t) "Genuine" means free of forgery or counterfeiting.

(u) "Good faith", except as otherwise provided in chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(v) "Holder" means:

(i) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(ii) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(iii) the person in control, other than pursuant to 30-7-107(7) of a negotiable electronic document of title.

(w) "Insolvency proceedings" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(x) "Insolvent" means:

(i) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(ii) unable to pay debts as they become due; or

(iii) insolvent within the meaning of the federal bankruptcy law.

(y) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government and is not in an electronic form. The term includes a monetary unit of account established by an intergovernmental organization or pursuant to an agreement between two or more countries.

(z) "Organization" means a person other than an individual.

(aa) "Party", as distinct from "third party", means a person that has engaged in a transaction or made an agreement subject to this code.

(bb) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this code that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(cc) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(dd) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(ee) "Purchaser" means a person that takes by purchase.

(ff) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(gg) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(hh) "Representative" means any other person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(ii) "Right" includes a remedy.

(jj) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9A. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9A. Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods in not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to 30-1-211.

(kk) "Send" in connection with a record or notification means:

(i) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) to cause the record or notification to be received within the time it would have been received if properly sent under subsection (2)(kk)(i).

(ll) (i) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(ii) "Signed", "signing", and "signature" have corresponding meanings.

(mm) "Surety" includes a guarantor or other secondary obligor.

(nn) "Term" means a portion of an agreement that relates to a particular matter.

(oo) "Unauthorized" signature means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(pp) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(qq) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**History:** **En. Sec. 1-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-201; amd. Sec. 2, Ch. 402, L. 1983; amd. Sec. 2, Ch. 410, L. 1991; amd. Sec. 130, Ch. 305, L. 1999; amd. Sec. 2, Ch. 179, L. 2001; amd. Sec. 4, Ch. 575, L. 2005; amd. Sec. 3, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-1-202. Prima facie evidence by third-party documents.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**History:** **En. Sec. 1-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-202.**

**Cross-References**

DEFINITIONAL

Bill of lading, 30-1-201.
Contract, 30-1-201.
Genuine, 30-1-201.

**30-1-203. Obligation of good faith.** Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

**History: En. Sec. 1-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-203.**

**Cross-References**

GENERAL

Course of dealing and usage of trade, 30-1-205.
Option to accelerate at will, 30-1-208.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Substituted performance, 30-2-614.
Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Contract, 30-1-201.
Good faith, 30-1-201, 30-2-103.

**30-1-204. Reasonable time — seasonableness.** (1) Whether a time for taking an action required by this code is reasonable depends on the nature, purpose, and circumstances of the action.

(2) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

**History: En. Sec. 1-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-204; amd. Sec. 5, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.

**30-1-205. Course of performance, course of dealing, and usage of trade.** (1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(3) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(4) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(5) Except as otherwise provided in subsection (6), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed wherever reasonable as consistent with each other. If such a construction is unreasonable:

(a) express terms prevail over course of performance, course of dealing, and usage of trade;
(b) course of performance prevails over course of dealing and usage of trade; and
(c) course of dealing prevails over usage of trade.

(6) Subject to 30-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

**History: En. Sec. 1-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-205; amd. Sec. 6, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.
Obligation of good faith, 30-1-203.
Definitions — merchant — between merchants — financing agency, 30-2-104.
Formal requirements — statute of frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.
Formation in general, 30-2-204.
Course of performance or practical construction, 30-2-208.
General obligation and construction of contract, Title 30, ch. 2, part 3.
Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

**30-1-206. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History: En. Sec. 1-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-206; amd. Sec. 2, Ch. 536, L. 1997; amd. Sec. 131, Ch. 305, L. 1999.**

**30-1-207. Performance or acceptance under reservation of rights.** (1) A party that, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction.

**History: En. Sec. 1-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-207; amd. Sec. 3, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Party, 30-1-201.
Rights, 30-1-201.

**30-1-208. Option to accelerate at will.** A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure" or in words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

**History: En. Sec. 1-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-1-208; amd. Sec. 7, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Burden of establishing, 30-1-201.
Good faith, 30-1-201.
Party, 30-1-201.
Term, 30-1-201.

**30-1-209. Subordinated obligations.** An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

**History: En. Sec. 3, Ch. 402, L. 1983; amd. Sec. 8, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Creditor, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

**30-1-210. Notice — knowledge.** (1) Subject to subsection (6), a person has "notice" of a fact if the person:

(a) has actual knowledge of it;

(b) has received a notice or notification of it; or

(c) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2) "Knowledge" means actual knowledge.

(3) "Discover", "learn", or words of similar import refer to knowledge rather than to notice.

(4) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course, whether or not the other person actually comes to know of it.

(5) Subject to subsection (6), a person "receives" a notice or notification when:

(a) it comes to that person's attention; or

(b) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(6) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**History: En. Sec. 9, Ch. 575, L. 2005.**

**30-1-211. Lease distinguished from security interest.** (1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods;

(c) the lessee agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(d) the lessee has an option to renew the lease or to become the owner of the goods;

(e) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(f) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(a) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(b) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(c) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

**History:** **En. Sec. 10, Ch. 575, L. 2005.**

**30-1-212. Value.** Except as otherwise provided in chapters 3 through 5 and 12A, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

**History:** **En. Sec. 11, Ch. 575, L. 2005; amd. Sec. 4, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 200, L. 2025. Amendment effective October 1, 2025.

## Part 3
## Territorial Applicability

**30-1-301. Territorial applicability — parties power to choose applicable law.** (1) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1) and except as provided in subsection (3), this code applies to transactions bearing an appropriate relation to this state.

(3) If one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) Section 30-2-402;
(b) Sections 30-2A-105 and 30-2A-106;
(c) Section 30-4-102;
(d) Section 30-4A-507;
(e) Section 30-5-136;
(f) Section 30-8-120;
(g) Sections 30-9A-301 through 30-9A-307;
(h) Section 30-12A-107.

**History:** **En. Sec. 12, Ch. 575, L. 2005; amd. Sec. 5, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-1-302. Variation by agreement.** (1) Except as otherwise provided in subsection (2) or elsewhere in this code, the effect of provisions of this code may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this code of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**History:** **En. Sec. 13, Ch. 575, L. 2005.**

# CHAPTER 2
# UNIFORM COMMERCIAL CODE
# SALES

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30-2-101. Short title.
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30-2-314. Implied warranty — merchantability — usage of trade.
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30-2-316. Exclusion or modification of warranties.
30-2-317. Cumulation and conflict of warranties express or implied.
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30-2-319. F.O.B. and F.A.S. terms.
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30-2-322. Delivery “ex-ship”.
30-2-323. Form of bill of lading required in overseas shipment — “overseas”.
30-2-324. “No arrival, no sale” term.
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30-2-714. Buyer's damages for breach in regard to accepted goods.
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30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.
30-2-721. Remedies for fraud.
30-2-722. Who can sue third parties for injury to goods.
30-2-723. Proof of market price — time and place.
30-2-724. Admissibility of market quotations.
30-2-725. Statute of limitations in contracts for sale.

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**Chapter Cross-References**

Sales, Title 30, ch. 11.
Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.
Marketing of agricultural products generally, Title 80, ch. 11.
Regulation of sale of milk — policy, 81-23-102.

## Part 1
## Short Title, General Construction, and Subject Matter

**30-2-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Sales.

**History: En. Sec. 2-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-101.**

**30-2-102. Scope — certain security and other transactions excluded from this chapter.** (1) Unless the context otherwise requires, and except as provided in subsection (3), this chapter applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

(a) if the sale-of-goods aspects do not predominate, only the provisions of this chapter that relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(b) if the sale-of-goods aspects predominate, this chapter applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction that do not relate to the sale of goods.

(3) This chapter does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

**History: En. Sec. 2-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-102; amd. Sec. 6, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Secured transactions, Title 30, ch. 9A.
Sales, Title 30, ch. 11.
Personal solicitation sales, Title 30, ch. 14, part 5.
Lost property — duties of finder, Title 70, ch. 5, part 1.

DEFINITIONAL

Contract, 30-1-201.
Contract for sale, 30-2-106.
Present sale, 30-2-106.
Sale, 30-2-106.

**30-2-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith", in the case of a merchant, means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Acceptance". 30-2-606.
"Banker's credit". 30-2-325.
"Between merchants". 30-2-104.
"Cancellation". 30-2-106(4).
"Commercial unit". 30-2-105.
"Confirmed credit". 30-2-325.
"Conforming to contract". 30-2-106.
"Contract for sale". 30-2-106.
"Cover". 30-2-712.
"Entrusting". 30-2-403.

"Financing agency". 30-2-104.
"Future goods". 30-2-105.
"Goods". 30-2-105.
"Identification". 30-2-501.
"Installment contract". 30-2-612.
"Letter of credit". 30-2-325.
"Lot". 30-2-105.
"Merchant". 30-2-104.
"Overseas". 30-2-323.
"Person in position of seller". 30-2-707.
"Present sale". 30-2-106.
"Sale". 30-2-106.
"Sale on approval". 30-2-326.
"Sale or return". 30-2-326.
"Termination". 30-2-106.

(3) The following definitions in other chapters apply to this chapter:
"Check" 30-3-104.
"Consignee". 30-7-102.
"Consignor". 30-7-102.
"Consumer goods". 30-9A-102.
"Dishonor". 30-3-512.
"Draft". 30-3-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History: En. Sec. 2-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-103; amd. Sec. 4, Ch. 410, L. 1991; amd. Sec. 132, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

Delegation of performance — assignment of rights, 30-2-210.

DEFINITIONAL

Person, 30-1-201.

**30-2-104. Definitions — "merchant" — "between merchants" — "financing agency".** (1) "Merchant" means a person that deals in goods of the kind or otherwise is held out by occupation as having knowledge or skill peculiar to the practices or goods involved in the transaction or to which the knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that is held out by occupation as having the knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person that in the ordinary course of business makes advances against goods or documents of title or that by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person that similarly intervenes between persons that are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

**History: En. Sec. 2-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-104; amd. Sec. 14, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.
Obligation of good faith, 30-1-203.
Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.
C.I.F. and C.&F. terms, 30-2-320.
"Letter of credit" term — "confirmed credit", 30-2-325.
Secured transactions, Title 30, ch. 9A.

Merchant's rights, Title 30, ch. 11, part 3.
Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Bank, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Person, 30-1-201.
Purchase, 30-1-201.
Seller, 30-2-103.

**30-2-105. Definitions — transferability — "goods" — "future" goods — "lot" — "commercial unit".** (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (30-2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

**History:** **En. Sec. 2-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-105.**

**Cross-References**

GENERAL

Formal requirements — statute of frauds, 30-2-201.
Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fungible, 30-1-201.
Money, 30-1-201.
Present sale, 30-2-106.
Sale, 30-2-106.
Seller, 30-2-103.

**30-2-106. Definitions — "contract" — "agreement" — "contract for sale" — "sale" — "present sale" — "conforming" to contract — "termination" — "cancellation" — "hybrid transaction".** (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

(c) a sale, lease, or license of property other than goods.

**History:** **En. Sec. 2-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-106; amd. Sec. 7, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 7, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Course of dealing and usage of trade, 30-1-205.
Course of performance or practical construction, 30-2-208.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Sale defined, 30-11-101.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-107. Goods to be severed from realty — recording.** (1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

**History:** **En. Sec. 2-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-107; amd. Sec. 4, Ch. 402, L. 1983.**

**Cross-References**

GENERAL

Definitions — transferability — goods — future goods — lot — commercial unit, 30-2-105.
Formal requirements — statute of frauds, 30-2-201.
Secured transactions, Title 30, ch. 9A.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Present sale, 30-2-106.
Rights, 30-1-201.
Seller, 30-2-103.

## Part 2

## Form, Formation, and Readjustment of Contract

**30-2-201. Formal requirements — statute of frauds.** (1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party's authorized agent or broker. A record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the record.

(2) Between merchants if within a reasonable time a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against the party unless notice in a record of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in the party's pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (30-2-606).

**History: En. Sec. 2-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-201; amd. Sec. 838, Ch. 56, L. 2009; amd. Sec. 8, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 8, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Contracts required to be in writing, 28-2-903.
Final written expression — parol or extrinsic evidence, 30-2-202.
Additional terms in acceptance or confirmation, 30-2-207.
Modification, rescission, and waiver, 30-2-209.
Price payable in money, goods, realty, or otherwise, 30-2-304.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Action, 30-1-201.
Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Sale, 30-2-106.
Seller, 30-2-103.

**30-2-202. Final written expression — parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**History:** **En. Sec. 2-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-202; amd. Sec. 9, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 9, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

When extrinsic evidence concerning written agreement may be considered, 28-2-905.
Additional terms in acceptance or confirmation, 30-2-207.
Unconscionable contract or clause, 30-2-302.
Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Course of dealing, 30-1-205.
Parties, 30-1-201.
Term, 30-1-201.
Usage of trade, 30-1-205.
Written and writing, 30-1-201.

**30-2-203. Seals inoperative.** The affixing of a seal to a record evidencing a contract for sale or an offer to buy or sell goods does not constitute the record a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**History:** **En. Sec. 2-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-203; amd. Sec. 10, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 10, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Seals, Title 1, ch. 4, part 2.
Firm offers, 30-2-205.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Writing, 30-1-201.

**30-2-204. Formation in general.** (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

**History:** **En. Sec. 2-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-204.**

**Cross-References**

GENERAL

Essential elements of contract, 28-2-102.
Supplementary general principles of law applicable, 30-1-103.
Formal requirements — statute of frauds, 30-2-201.
Unconscionable contract or clause, 30-2-302.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.

**30-2-205. Firm offers.** An offer by a merchant to buy or sell goods in a signed record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**History:** **En. Sec. 2-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-205; amd. Sec. 11, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 11, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Contracts — communication of consent — revocation of proposal, Title 28, ch. 2, part 5.
Purposes — rule of construction — variation by agreement, 30-1-102.
Formal requirements — statute of frauds, 30-2-201.
Unconscionable contract or clause, 30-2-302.
Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Goods, 30-2-105.
Merchant, 30-2-104.
Signed, 30-1-201.
Writing, 30-1-201.

**30-2-206. Offer and acceptance in formation of contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**History:** **En. Sec. 2-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-206.**

**Cross-References**

GENERAL

Essential characteristics of consent, 28-2-301.
Agreement to sell and buy, 30-11-106.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.

**30-2-207. Additional terms in acceptance or confirmation.** (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional or different terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

**History:** **En. Sec. 2-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-207; amd. Sec. 5, Ch. 402, L. 1983.**

**Cross-References**

Effect of written contract on oral agreements, 28-2-904.
Rules of construction — variation by agreement, 30-1-102.
Transactions between merchants, 30-2-104.
Unconscionable contract or clause, 30-2-302.
Buyer's right to inspection of goods, 30-2-513.
Manner and effect of rightful rejection, 30-2-602.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Right to adequate assurance of performance, 30-2-609.
"Installment contract" — breach, 30-2-612.
Substituted performance, 30-2-614.
Excuse by failure of presupposed conditions, 30-2-615.
Procedure on notice claiming excuse, 30-2-616.
Liquidation or limitation of damages — deposits, 30-2-718.
Contractual modification or limitation of remedy, 30-2-719.

**30-2-208. Course of performance or practical construction.** (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (30-1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

**History: En. Sec. 2-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-208.**

**Cross-References**

Intention of parties, Title 28, ch. 3, part 3.
Final written expression — parol or extrinsic evidence, 30-2-202.
Modification, rescission, and waiver, 30-2-209.
Buyer's rights on improper delivery, 30-2-601.
Waiver of buyer's objections by failure to particularize, 30-2-605.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

**30-2-209. Modification, rescission and waiver.** (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**History: En. Sec. 2-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-209; amd. Sec. 12, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 12, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.
Rescission of contracts, Title 28, ch. 2, part 17.
Obligation of good faith, 30-1-203.

Definitions — contract — agreement — contract for sale — sale — present sale — conforming to contract — termination — cancellation, 30-2-106.
Formal requirements — statute of frauds, 30-2-201.
Final written expression — parol or extrinsic evidence, 30-2-202.
Course of performance or practical construction, 30-2-208.
Excuse by failure of presupposed conditions, 30-2-615.
Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Agreement, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Notification, 30-1-201.
Signed, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

**30-2-210. Delegation of performance — assignment of rights.** (1) A party may perform the party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the party's original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except when the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by the contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:

(a) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(b) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment that delegates performance as creating reasonable grounds for insecurity and may without prejudice to the other party's rights against the assignor demand assurances from the assignee (30-2-609).

**History: En. Sec. 2-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-210; amd. Sec. 133, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.
Output, requirements, and exclusive dealings, 30-2-306.
Letters of credit, Title 30, ch. 5.
Secured transactions, Title 30, ch. 9A.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

## Part 3
## General Obligation and Construction of Contract

**Part Cross-References**

Interpretation of contracts, Title 28, ch. 3.

**30-2-301. General obligations of parties.** The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

**History: En. Sec. 2-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-301.**

**Cross-References**

GENERAL

Obligations in general, Title 28, ch. 1.
Remedies to be liberally administered, 30-1-106.
Course of dealing and usage of trade, 30-1-205.
Course of performance or practical construction, 30-2-208.
Modification, rescission, and waiver, 30-2-209.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

**30-2-302. Unconscionable contract or clause.** (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

**History: En. Sec. 2-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-302.**

**Cross-References**

GENERAL

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

DEFINITIONAL

Contract, 30-1-201.

**30-2-303. Allocation or division of risks.** Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

**History: En. Sec. 2-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-303.**

**Cross-References**

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.

DEFINITIONAL

Agreement, 30-1-201.
Party, 30-1-201.

**30-2-304. Price payable in money, goods, realty, or otherwise.** (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which that party is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection with the transfer.

**History: En. Sec. 2-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-304; amd. Sec. 839, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.
Purposes — rules of construction — variation by agreement, 30-1-102.
Supplementary general principles of law applicable, 30-1-103.
Construction against implicit repeal, 30-1-104.
Goods to be severed from realty — recording, 30-2-107.

DEFINITIONAL

Goods, 30-2-105.
Money, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

**30-2-305. Open price term.** (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price to be fixed in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at the party's option treat the contract as canceled or the party may fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

**History: En. Sec. 2-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-305; amd. Sec. 840, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Formation in general, 30-2-204.
Options and cooperation respecting performance, 30-2-311.
Anticipatory repudiation, 30-2-610.
Seller's resale including contract for resale, 30-2-706.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-306. Output, requirements and exclusive dealings.** (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

**History: En. Sec. 2-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-306.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Delegation of performance — assignment of rights, 30-2-210.
Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-307. Delivery in single lot or several lots.** Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

**History: En. Sec. 2-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-307.**

**Cross-References**

GENERAL

Application of performance when several obligations, 28-1-1106.
Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Buyer's rights on improper delivery, 30-2-601.
Revocation of acceptance in whole or in part, 30-2-608.
Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.

**30-2-308. Absence of specified place for delivery.** Unless otherwise agreed:

(a) the place for delivery of goods is the seller's place of business or if none, the seller's residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

**History: En. Sec. 2-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-308; amd. Sec. 841, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Objections to tender — waiver, 28-1-1112.
Manner of seller's tender of delivery, 30-2-503.
Shipment by seller, 30-2-504.
Seller's shipment under reservation, 30-2-505.
Payment by buyer before inspection, 30-2-512.
Collection of documentary drafts, Title 30, ch. 4, part 5.
Letters of credit, Title 30, ch. 5.
Delivery — where made, 30-11-204.
Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Seller, 30-2-103.

**30-2-309. Absence of specific time provisions — notice of termination.** (1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

**History: En. Sec. 2-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-309.**

**Cross-References**

GENERAL

Time of performance, Title 28, ch. 3, part 6.
Obligation of good faith, 30-1-203.
Time — reasonable time — seasonably, 30-1-204.
Definitions — contract — agreement — contract for sale — sale — present sale — conforming to contract — termination — cancellation, 30-2-106.
Formation in general, 30-2-204.
Third-party beneficiaries of warranties express or implied, 30-2-318.
C.I.F. and C.&F. terms, 30-2-320.
C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.
Shipment by seller, 30-2-504.
Tender of payment by buyer — payment by check, 30-2-511.
Payment by buyer before inspection, 30-2-512.
Buyer's right to inspection of goods, 30-2-513.
When documents deliverable on acceptance — when on payment, 30-2-514.
Right to adequate assurance of performance, 30-2-609.
Anticipatory repudiation, 30-2-610.
Seller's remedies in general, 30-2-703.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Notification, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Termination, 30-2-106.

**30-2-310. Open time for payment or running of credit — authority to ship under reservation.** Unless otherwise agreed:

(1) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(2) if the seller is authorized to send the goods the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(3) if delivery is authorized and made by way of documents of title otherwise than by subsection (2) then payment is due regardless of where the goods are to be received:

(a) at the time and place at which the buyer is to receive delivery of the tangible documents;

(b) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence; and

(4) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

**History: En. Sec. 2-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-310; amd. Sec. 15, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Absence of specified place for delivery, 30-2-308.
Seller's shipment under reservation, 30-2-505.
Risk of loss in absence of breach, 30-2-509.
Tender of payment by buyer — payment by check, 30-2-511.
Payment by buyer before inspection, 30-2-512.
Bank deposits and collections, Title 30, ch. 4.

DEFINITIONAL

Buyer, 30-2-103.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Receipt of goods, 30-2-103.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

**30-2-311. Options and cooperation respecting performance.** (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of 30-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of 30-2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where the specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) is excused for any resulting delay in that party's own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of that party's own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

**History:** **En. Sec. 2-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-311; amd. Sec. 842, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Extinction of obligation by performance, Title 28, ch. 1, part 11.
Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.
When delay or failure to perform or offer to perform excused, 28-1-1301.
Obligation of good faith, 30-1-203.
Right to adequate assurance of performance, 30-2-609.
Substituted performance, 30-2-614.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

**30-2-312. Warranty of title and against infringement — buyer's obligation against infringement.** (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title or that the seller is purporting to sell only the right or title as the seller or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

**History:** **En. Sec. 2-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-312; amd. Sec. 843, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Title to thing offered, 28-1-1221.
Obligation of good faith, 30-1-203.
Exclusion or modification of warranties, 30-2-316.
Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Right to adequate assurance of performance, 30-2-609.
Statute of limitations in contracts for sale, 30-2-725.
Warranty of title to personal property, 30-11-211.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Person, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-313. Express warranties by affirmation, promise, description, sample.** (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

**History: En. Sec. 2-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-313; amd. Sec. 844, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.
Supplementary general principles of law applicable, 30-1-103.
Course of dealing and usage of trade, 30-1-205.
Modification, rescission, and waiver, 30-2-209.
Implied warranty — merchantability — usage of trade, 30-2-314.
Exclusion or modification of warranties, 30-2-316.
Third-party beneficiaries of warranties express or implied, 30-2-318.
Warranty on sale by sample, 30-11-212.
Warranty when seller knows that buyer relies on seller's statements, 30-11-213.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-314. Implied warranty — merchantability — usage of trade.** (1) Unless excluded or modified (30-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (30-2-316) other implied warranties may arise from course of dealing or usage of trade.

**History:** En. Sec. 2-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-314.

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Course of dealing and usage of trade, 30-1-205.
Definitions — merchant — between merchants — financing agency, 30-2-104.
Implied warranty — fitness for particular purpose, 30-2-315.
Manufacturer's warranty against latent defects, 30-11-215.
Warranty of fitness for particular purpose, 30-11-216.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Merchant, 30-2-104.
Seller, 30-2-103.

**30-2-315. Implied warranty — fitness for particular purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

**History:** En. Sec. 2-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-315.

**Cross-References**

GENERAL

Allocation or division of risks, 30-2-303.
Implied warranty — merchantability — usage of trade, 30-2-314.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.
Warranty of fitness for particular purpose, 30-11-216.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-316. Exclusion or modification of warranties.** (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, or horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; and

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719).

**History: En. Sec. 2-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-316; amd. Sec. 1, Ch. 95, L. 1979; amd. Sec. 1, Ch. 33, L. 1983; amd. Sec. 845, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Course of dealing and usage of trade, 30-1-205.
Course of performance or practical construction, 30-2-208.
No implied warranty in mere contract for sale, 30-11-210.
Effect of general warranty, 30-11-223.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Course of dealing, 30-1-205.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.
Usage of trade, 30-1-205.

**30-2-317. Cumulation and conflict of warranties express or implied.** Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**History: En. Sec. 2-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-317.**

**Cross-References**

GENERAL

Express warranties by affirmation, promise, description, or sample, 30-2-313.
Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.
Warranty on sale by sample, 30-11-212.
Effect of general warranty, 30-11-223.

DEFINITIONAL

Party, 30-1-201.

**30-2-318. Third-party beneficiaries of warranties express or implied.** A seller's warranty whether express or implied extends to any natural person who is in the family or household of the buyer or who is a guest in the buyer's home if it is reasonable to expect that the person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

**History: En. Sec. 2-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-318; amd. Sec. 846, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Implied warranty — merchantability — usage of trade, 30-2-314.
Exclusion or modification of warranties, 30-2-316.
Buyer's incidental and consequential damages, 30-2-715.
Liquidation or limitation of damages — deposits, 30-2-718.
Contractual modification or limitation of remedy, 30-2-719.
Manufacturer's warranty against latent defects, 30-11-215.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-319. F.O.B. and F.A.S. terms.** (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (30-2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at the seller's own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (30-2-503);

(c) when under either subsection (1)(a) or (1)(b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at the seller's own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (30-2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) at the seller's own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (1)(c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (30-2-311). The seller may also at the seller's option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**History: En. Sec. 2-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-319; amd. Sec. 847, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Expense of transportation, 30-11-205.
Transportation, 30-11-207.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-320. C.I.F. and C.&F. terms.** (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at the seller's own expense and risk to:

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier, which may be contained in the bill of lading, showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**History: En. Sec. 2-320, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-320; amd. Sec. 848, Ch. 56, L. 2009.**

**Cross-References**

Prima facie evidence by third-party documents, 30-1-202.
C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.
Form of bill of lading required in overseas shipment — "overseas", 30-2-323.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Risk of loss in absence of breach, 30-2-509.
Payment by buyer before inspection, 30-2-512.
Buyer's right to inspection of goods, 30-2-513.
Waiver of buyer's objections by failure to particularize, 30-2-605.
Letters of credit, Title 30, ch. 5.
Expense of transportation, 30-11-205.

**30-2-321. C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival.** Under a contract containing a term C.I.F. or C.&F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

**History: En. Sec. 2-321, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-321.**

**Cross-References**

GENERAL

C.I.F. and C.&F. terms, 30-2-320.
"No arrival, no sale" term, 30-2-324.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-322. Delivery "ex-ship".** (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

**History: En. Sec. 2-322, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-322.**

**Cross-References**

GENERAL

F.O.B. and F.A.S. terms, 30-2-319.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-323. Form of bill of lading required in overseas shipment — "overseas".** (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

**History: En. Sec. 2-323, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-323; amd. Sec. 16, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Bills of lading — special provisions, Title 30, ch. 7, part 3.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Person, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

**30-2-324. "No arrival, no sale" term.** Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) the seller must properly ship conforming goods and if they arrive by any means the seller must tender them on arrival but the seller assumes no obligation that the goods will arrive unless the seller has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there has been casualty to identified goods (30-2-613).

**History: En. Sec. 2-324, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-324; amd. Sec. 849, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Insurable interest in goods — manner of identification of goods, 30-2-501.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-325. "Letter of credit" term — "confirmed credit".** (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to the seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from the buyer.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

**History: En. Sec. 2-325, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-325; amd. Sec. 850, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Deposit of money offered in payment, 28-1-1225.
Power to transfer — good faith purchase of goods — entrusting, 30-2-403.
Tender of payment by buyer — payment by check, 30-2-511.
Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Draft, 30-3-104.
Financing agency, 30-2-104.
Notifies, 30-1-201.
Overseas, 30-2-323.
Purchaser, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-326. Sale on approval and sale or return — rights of creditors.** (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202).

**History: En. Sec. 2-326, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-326; amd. Sec. 134, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

Commission merchants, Title 30, ch. 11, part 4.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Creditor, 30-1-201.
Goods, 30-2-105.
Sale, 30-2-106.
Seller, 30-2-103.

**30-2-327. Special incidents of sale on approval and sale or return.** (1) Under a sale on approval unless otherwise agreed:

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

**History: En. Sec. 2-327, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-327.**

**Cross-References**

GENERAL

Time — reasonable time — "seasonably", 30-1-204.
Insurable interest in goods — manner of identification of goods, 30-2-501.
Buyer's rights on improper delivery, 30-2-601.
Merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Revocation of acceptance in whole or in part, 30-2-608.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Notifies, 30-1-201.
Sale on approval, 30-2-326.
Sale or return, 30-2-326.
Seasonably, 30-1-204.
Seller, 30-2-103.

## Part 4
## Title, Creditors, and Good Faith Purchasers

**30-2-401. Passing of title — reservation for security — limited application of this section.** Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or the seller's designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

**History: En. Sec. 2-401, Ch. 264, L. 1963; amd. Sec. 1, Ch. 130, L. 1975; R.C.M. 1947, 87A-2-401; amd. Sec. 1, Ch. 160, L. 1989; amd. Sec. 17, Ch. 575, L. 2005; amd. Sec. 851, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Title to thing offered, 28-1-1221.
Scope — certain security and other transactions excluded from this chapter, 30-2-102.
Rights of seller's creditors against sold goods, 30-2-402.
Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.
Buyer's right to goods on seller's insolvency, 30-2-502.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.

**30-2-402. Rights of seller's creditors against sold goods.** (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (30-2-502 and 30-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in

good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the Chapter on Secured Transactions (Chapter 9A); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

**History:** **En. Sec. 2-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-402; amd. Sec. 852, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Thing offered to be kept separate, 28-1-1223.
When seller must act as depositary, 30-11-201.

DEFINITIONAL

Contract for sale, 30-2-106.
Creditor, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Money, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Sale, 30-2-106.
Seller, 30-2-103.

**30-2-403. Power to transfer — good faith purchase of goods — "entrusting".** (1) A purchaser of goods acquires all title which the purchaser's transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has the power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods has been such as to constitute theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 9A) and documents of title (chapter 7).

**History:** **En. Sec. 2-403, Ch. 264, L. 1963; amd. Sec. 63, Ch. 359, L. 1977; R.C.M. 1947, 87A-2-403; amd. Sec. 5, Ch. 410, L. 1991; amd. Sec. 853, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

General duty of care, 28-1-201.
Offer to be made in good faith, 28-1-1209.
Purposes — rules of construction — variation by agreement, 30-1-102.
Supplementary general principles of law applicable, 30-1-103.
Rights of seller's creditors against sold goods, 30-2-402.
"Person in the position of a seller", 30-2-707.
Title under warehouse receipt defeated in certain cases, 30-7-205.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Good faith, 30-1-201, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.

Person, 30-1-201.
Purchaser, 30-1-201.
Signed, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.

## Part 5
## Performance

**Part Cross-References**

Extinction of obligation by performance, Title 28, ch. 1, part 11.
Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.
Prevention of performance, Title 28, ch. 1, part 13.

**30-2-501. Insurable interest in goods — manner of identification of goods.** (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and the buyer has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in subsection (1)(c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in the seller and where the identification is by the seller alone the seller may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

**History: En. Sec. 2-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-501; amd. Sec. 854, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Thing offered to be kept separate, 28-1-1223.
Definitions — transferability — goods — future goods — lot — commercial unit, 30-2-105.
Goods to be severed from realty — recording, 30-2-107.
Absence of specified place for delivery, 30-2-308.
Rights of seller's creditors against sold goods, 30-2-402.
Buyer's right to goods on seller's insolvency, 30-2-502.
Manner of seller's tender of delivery, 30-2-503.
Risk of loss in absence of breach, 30-2-509.
Effect of breach on risk of loss, 30-2-510.
Seller's remedies in general, 30-2-703.
Commission merchants to acknowledge receipt of property, 30-11-401.

DEFINITIONAL

Agreement, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Future goods, 30-2-105.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-502. Buyer's right to goods on seller's insolvency.** (1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in other cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

**History:** **En. Sec. 2-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-502; amd. Sec. 135, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

Rights of seller's creditors against sold goods, 30-2-402.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Secured transactions, Title 30, ch. 9A.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Insolvent, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-503. Manner of seller's tender of delivery.** (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that the seller comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in chapter 9A receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) the seller must tender all such documents in correct form; and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

**History:** **En. Sec. 2-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-503; amd. Sec. 18, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Objections to tender — waiver, 28-1-1112.
Extinction of obligation by offer of performance, Title 28, ch. 1, part 12.

Specific matters involving tender, 30-1-205, 30-2-301, 30-2-306 through 30-2-319, 30-2-321, 30-2-504, 30-2-507, 30-2-511, 30-2-513, 30-2-612, 30-2-614.
Course of dealing and usage of trade, 30-1-205.
General obligations of parties, 30-2-301.
Absence of specified place for delivery, 30-2-308.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
Effect of seller's tender — delivery in condition, 30-2-507.
Risk of loss in absence of breach, 30-2-509.
Buyer's right to inspection of goods, 30-2-513.
Substituted performance, 30-2-614.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Delivery on demand, 30-11-203.
Delivery — where made, 30-11-204.

DEFINITIONAL

Agreement, 30-1-201.
Bill of lading, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Delivery, 30-1-201.
Dishonor, 30-3-508.
Document of title, 30-1-201.
Draft, 30-3-104.
Goods, 30-2-105.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.
Written, 30-1-201.

**30-2-504. Shipment by seller.** Where the seller is required or authorized to send the goods to the buyer and the contract does not require the seller to deliver them at a particular destination, then unless otherwise agreed the seller must:

(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) promptly notify the buyer of the shipment. Failure to notify the buyer under this subsection or to make a proper contract under subsection (1) is a ground for rejection only if material delay or loss ensues.

**History: En. Sec. 2-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-504; amd. Sec. 855, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Extinction when directions of creditor followed, 28-1-1104.
Obligation of good faith, 30-1-203.
Options and cooperation respecting performance, 30-2-311.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Form of bill of lading required in overseas shipment — "overseas", 30-2-323.
Manner of seller's tender of delivery, 30-2-503.
Buyer's rights on improper delivery, 30-2-601.
Substituted performance, 30-2-614.
Excuse by failure of presupposed conditions, 30-2-615.
Delivery on demand, 30-11-203.
Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.

Seller, 30-2-103.
Send, 30-1-201.
Usage of trade, 30-1-205.

**30-2-505. Seller's shipment under reservation.** (1) Where the seller has identified goods to the contract by or before shipment:

(a) the seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of 30-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

**History: En. Sec. 2-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-505; amd. Sec. 856, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

When offer may be conditional, 28-1-1211.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.
Insurable interest in goods — manner of identification of goods, 30-2-501.
Buyer's right to goods on seller's insolvency, 30-2-502.
Shipment by seller, 30-2-504.
Seller's stoppage of delivery in transit or otherwise, 30-2-705.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Bill of lading, 30-1-201.
Buyer, 30-2-103.
Consignee, 30-7-102.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Holder, 30-1-201.
Person, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-506. Rights of financing agency.** (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

**History: En. Sec. 2-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-506; amd. Sec. 19, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Rights arising out of obligation transferable, 28-1-1001.
Insurable interest in goods — manner of identification of goods, 30-2-501.
Buyer's right to goods on seller's insolvency, 30-2-502.
Bank deposits and collections, Title 30, ch. 4.
Letters of credit, Title 30, ch. 5.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Document of title, 30-1-201.
Draft, 30-3-104.
Financing agency, 30-2-104.
Good faith, 30-2-103.
Goods, 30-2-105.
Honor, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Value, 30-1-201.

**30-2-507. Effect of seller's tender — delivery on condition.** (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to the buyer's duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, the buyer's right as against the seller to retain or dispose of them is conditional upon the buyer making the payment due.

**History: En. Sec. 2-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-507; amd. Sec. 857, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

When obligation extinguished by offer of performance, 28-1-1201.
Offeror to be willing and able to perform, 28-1-1210.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
Passing of title — reservation for security, 30-2-401.
Good faith purchase of goods, 30-2-403.
Manner of seller's tender of delivery, 30-2-503.
Tender of payment by buyer — payment by check, 30-2-511.
Buyer's rights on improper delivery, 30-2-601.
Substituted performance, 30-2-614.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's damages for nondelivery or repudiation, 30-2-713.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-508. Cure by seller of improper tender or delivery — replacement.** (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of the seller's intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if the seller seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

**History: En. Sec. 2-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-508; amd. Sec. 858, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Objections to tender — waiver, 28-1-1112.
Offer of partial performance ineffective, 28-1-1203.
Course of dealing and usage of trade, 30-1-205.
Unconscionable contract or clause, 30-2-302.
Tender of payment by buyer — payment by check, 30-2-511.
Buyer's rights on improper delivery, 30-2-601.
Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Money, 30-1-201.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Seasonably, 30-1-204.
Seller, 30-2-103.

**30-2-509. Risk of loss in the absence of breach.** (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require the seller to deliver them at a particular destination and the goods are there tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in 30-2-503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510).

**History: En. Sec. 2-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-509; amd. Sec. 20, Ch. 575, L. 2005; amd. Sec. 859, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Shipment by seller, 30-2-504.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Contract, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Party, 30-1-201.
Receipt of goods, 30-2-103.
Sale on approval, 30-2-326.
Seller, 30-2-103.

**30-2-510. Effect of breach on risk of loss.** (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance the buyer may to the extent of any deficiency in the buyer's effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to the buyer, the seller may to the extent of any deficiency in the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

**History: En. Sec. 2-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-510; amd. Sec. 860, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Breach of contract, 27-1-311.
Risk of loss in absence of breach, 30-2-509.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-511. Tender of payment by buyer — payment by check.** (1) Unless otherwise agreed, tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (30-3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

**History: En. Sec. 2-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-511; amd. Sec. 6, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Objections to tender — waiver, 28-1-1112.
Deposit of money offered in payment, 28-1-1225.
Delivery in single lot or several lots, 30-2-307.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
Delivery "ex-ship", 30-2-322.
"Letter of credit" term — "confirmed credit", 30-2-325.
Manner of seller's tender of delivery, 30-2-503.
Shipment by seller, 30-2-504.
Effect of seller's tender — delivery on condition, 30-2-507.
Buyer's right to inspection of goods, 30-2-513.
Right to adequate assurance of performance, 30-2-609.
Substituted performance, 30-2-614.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Negotiable instruments, Title 30, ch. 3.

DEFINITIONAL

Buyer, 30-2-103.
Check, 30-3-104.
Dishonor, 30-3-508.
Party, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

**30-2-512. Payment by buyer before inspection.** (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (30-5-129(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of the buyer's remedies.

**History: En. Sec. 2-512, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-512; amd. Sec. 3, Ch. 536, L. 1997.**

**Cross-References**

GENERAL

Performance or acceptance under reservation of rights, 30-1-207.
Buyer's right to inspection of goods, 30-2-513.
Letters of credit, Title 30, ch. 5.
Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Financing agency, 30-2-104.
Goods, 30-2-105.
Remedy, 30-1-201.
Rights, 30-1-201.

**30-2-513. Buyer's right to inspection of goods.** (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (subsection (3) of 30-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

**History: En. Sec. 2-513, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-513.**

**Cross-References**

GENERAL

Production of thing to be delivered, 28-1-1222.
Time — reasonable time — "seasonably", 30-1-204.
Open time for payment or running of credit — authority to ship under reservation, 30-2-310.
Exclusion or modification of warranties, 30-2-316.
Insurable interest in goods — manner of identification of goods, 30-2-501.
Buyer's right to goods on seller's insolvency, 30-2-502.
What constitutes acceptance of goods, 30-2-606.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Revocation of acceptance in whole or in part, 30-2-608.
Buyer's incidental and consequential damages, 30-2-715.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Presumed, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seller, 30-2-103.
Send, 30-1-201.
Term, 30-1-201.

**30-2-514. When documents deliverable on acceptance — when on payment.** Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

**History: En. Sec. 2-514, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-514.**

**Cross-References**

GENERAL

Receipt for money, instrument, or property delivered, 28-1-1111.
Buyer's right to goods on seller's insolvency, 30-2-502.
Seller's shipment under reservation, 30-2-505.
Effect of seller's tender — delivery on condition, 30-2-507.
Payment by buyer before inspection, 30-2-512.
Buyer's right to inspection of goods, 30-2-513.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.

**30-2-515. Preserving evidence of goods in dispute.** In furtherance of the adjustment of any claim or dispute:

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

**History: En. Sec. 2-515, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-515.**

**Cross-References**

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Thing offered to be kept separate, 28-1-1223.
Prima facie evidence by third-party documents, 30-1-202.
Performance or acceptance under reservation of rights, 30-1-207.
Buyer's right to inspection of goods, 30-2-513.
Casualty to identified goods, 30-2-613.
Seller's resale including contract for resale, 30-2-706.
Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.

DEFINITIONAL

Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Party, 30-1-201.

## Part 6
## Breach, Repudiation, and Excuse

**30-2-601. Buyer's rights on improper delivery.** Subject to the provisions of this chapter on breach in installment contracts (30-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (30-2-718 and 30-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

(a) reject the whole; or
(b) accept the whole; or
(c) accept any commercial unit or units and reject the rest.

**History: En. Sec. 2-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-601.**

**Cross-References**

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.
Manner and effect of rightful rejection, 30-2-602.
Delivery — where made, 30-11-204.
Delivery to be within reasonable hours, 30-11-208.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Contract, 30-1-201.

Goods, 30-2-105.
Installment contract, 30-2-612.
Rights, 30-1-201.

**30-2-602. Manner and effect of rightful rejection.** (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (30-2-603 and 30-2-604):

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which the buyer does not have a security interest under the provisions of this chapter (subsection (3) of 30-2-711), the buyer is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (30-2-703).

**History: En. Sec. 2-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-602; amd. Sec. 861, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Effect of refusal to accept performance before offer, 28-1-1304.
Time — reasonable time — "seasonably", 30-1-204.
Payment by buyer before inspection, 30-2-512.
Buyer's right to inspection of goods, 30-2-513.
Improper delivery — buyer's rights, 30-2-601.
What constitutes acceptance of goods, 30-2-606.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Merchant, 30-2-104.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Rights, 30-1-201.
Seasonably, 30-1-204.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-603. Merchant buyer's duties as to rightfully rejected goods.** (1) Subject to any security interest in the buyer (subsection (3) of 30-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in the buyer's possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), the buyer is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

**History: En. Sec. 2-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-603; amd. Sec. 862, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Remedies to be liberally administered, 30-1-106.
Seller's resale including contract for resale, 30-2-706.

Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Good faith, 30-1-201.
Goods, 30-2-105.
Merchant, 30-2-104.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-604. Buyer's options as to salvage of rightfully rejected goods.** Subject to the provisions of 30-2-603 on perishables if the seller gives no instruction within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to the seller or resell them for the seller's account with reimbursement as provided in 30-2-603. The action is not acceptance or conversion.

**History: En. Sec. 2-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-604; amd. Sec. 863, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Manner and effect of rightful rejection, 30-2-602.
Merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Buyer, 30-2-103.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.

**30-2-605. Waiver of buyer's objections by failure to particularize.** (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

**History: En. Sec. 2-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-605; amd. Sec. 21, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Cure by seller of improper tender or delivery — replacement, 30-2-508.
Payment by buyer before inspection, 30-2-512.
What constitutes acceptance of goods, 30-2-606.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Seasonably, 30-1-204.
Seller, 30-2-103.
Writing and written, 30-1-201.

**30-2-606. What constitutes acceptance of goods.** (1) Acceptance of goods occurs when the buyer:

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of 30-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by the seller.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**History:** En. Sec. 2-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-606; amd. Sec. 864, Ch. 56, L. 2009.

**Cross-References**

GENERAL

Extinction of obligation by full performance, 28-1-1101.
Extinction when directions of creditor followed, 28-1-1104.
Passing of title — reservation for security — limited application, 30-2-401.
Risk of loss in absence of breach, 30-2-509.
Effect of breach on risk of loss, 30-2-510.
Buyer's rights on improper delivery, 30-2-601.
Merchant buyer's duties as to rightfully rejected goods, 30-2-603.
Buyer's options as to salvage of rightfully rejected goods, 30-2-604.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Revocation of acceptance in whole or in part, 30-2-608.
Remedies, Title 30, ch. 2, part 7.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-607. Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over.** (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) the buyer must within a reasonable time after the buyer discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) and the buyer is sued as a result of such a breach the buyer must so notify the seller within a reasonable time after the buyer receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which another party is answerable over:

(a) the buyer may give the other party written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so the other party will be bound in any action against the other party by the buyer by any determination of fact common to the two litigations, then unless the other party after seasonable receipt of the notice does come in and defend the other party is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of 30-2-312) the original seller may demand in writing that its buyer turn over to it control of the litigation including settlement or else be barred from any remedy over and if it also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of 30-2-312).

**History:** En. Sec. 2-607, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-607; amd. Sec. 865, Ch. 56, L. 2009.

**Cross-References**

GENERAL

Time — reasonable time — "seasonably", 30-1-204.
Performance or acceptance under reservation of rights, 30-1-207.
Third-party beneficiaries of warranties express or implied, 30-2-318.
Waiver of buyer's objections by failure to particularize, 30-2-605.
Revocation of acceptance in whole or in part, 30-2-608.
Deduction of damages from price, 30-2-717.
Warranty when thing cannot be examined by buyer, 30-11-217.

DEFINITIONAL

Burden of establishing, 30-1-201.
Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Remedy, 30-1-201.
Seasonably, 30-1-204.

**30-2-608. Revocation of acceptance in whole or in part.** (1) The buyer may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the buyer if the buyer has accepted it:

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if the buyer's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if the buyer had rejected them.

**History: En. Sec. 2-608, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-608; amd. Sec. 866, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Offer of partial performance ineffective, 28-1-1203.
When party may rescind, 28-2-1711.
Time — reasonable time — "seasonably", 30-1-204.
Buyer's rights on improper delivery, 30-2-601.
Manner and effect of rightful rejection, 30-2-602.
Waiver of buyer's objections by failure to particularize, 30-2-605.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Remedies for fraud, 30-2-721.

DEFINITIONAL

Buyer, 30-2-103.
Commercial unit, 30-2-105.
Conform, 30-2-106.
Goods, 30-2-105.
Lot, 30-2-105.
Notifies, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

**30-2-609. Right to adequate assurance of performance.** (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until the party receives such assurance may if commercially reasonable suspend any performance for which the party has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

**History: En. Sec. 2-609, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-609; amd. Sec. 867, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Offer to be made in good faith, 28-1-1209.
Offeror to be able and willing to perform, 28-1-1210.
Obligation of good faith, 30-1-203.
Option to accelerate at will, 30-1-208.
Retraction of anticipatory repudiation, 30-2-611.
Negotiable instruments, Title 30, ch. 3.
Secured transactions, Title 30, ch. 9A.
Warranty when seller knows buyer relies on seller's statements, 30-11-213.

DEFINITIONAL

Aggrieved party, 30-1-201.
Between merchants, 30-2-104.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Party, 30-1-201.
Reasonable time, 30-1-204.
Rights, 30-1-201.
Writing, 30-1-201.

**30-2-610. Anticipatory repudiation.** When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(1) for a commercially reasonable time await performance by the repudiating party; or

(2) resort to any remedy for breach (30-2-703 or 30-2-711), even though the aggrieved party has notified the repudiating party that it would await the latter's performance and has urged retraction; and

(3) in either case suspend performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (30-2-704).

**History: En. Sec. 2-610, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-610; amd. Sec. 868, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Effect of refusal to accept performance before offer, 28-1-1304.
When proposal may be revoked, 28-2-511.
Obligation of good faith, 30-1-203.
Right to adequate assurance of performance, 30-2-609.
"Installment contract" — breach, 30-2-612.

DEFINITIONAL

Aggrieved party, 30-1-201.
Contract, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.

**30-2-611. Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due that party can retract the repudiation unless the aggrieved party has since the repudiation canceled or materially changed position or otherwise indicated that the repudiation is final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (30-2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**History: En. Sec. 2-611, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-611; amd. Sec. 869, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Anticipatory repudiation, 30-2-610.

DEFINITIONAL

Aggrieved party, 30-1-201.
Cancellation, 30-2-106.
Contract, 30-1-201.
Party, 30-1-201.
Rights, 30-1-201.

**30-2-612. "Installment contract" — breach.** (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if the party accepts a nonconforming installment without seasonably notifying of cancellation or if the party brings an action with respect only to past installments or demands performance as to future installments.

**History: En. Sec. 2-612, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-612; amd. Sec. 870, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Breach of contract, 27-1-311.
Obligation of good faith, 30-1-203.
Course of performance or practical construction, 30-2-208.
Delivery in single lot or several lots, 30-2-307.
Effect of acceptance — notice of breach — burden of establishing breach after acceptance — notice of claim or litigation to person answerable over, 30-2-607.
Right to adequate assurance of performance, 30-2-609.
Anticipatory repudiation, 30-2-610.
Retail installment sales, Title 31, ch. 1, part 2.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Conform, 30-2-106.
Contract, 30-1-201.
Lot, 30-2-105.
Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

**30-2-613. Casualty to identified goods.** Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (30-2-324) then:

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at the buyer's option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

**History: En. Sec. 2-613, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-613; amd. Sec. 871, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Preserving evidence of goods in dispute, 30-2-515.
Who can sue third parties for injury to goods, 30-2-722.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Contract, 30-1-201.
Fault, 30-1-201.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-614. Substituted performance.** (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payments fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

**History:** **En. Sec. 2-614, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-614.**

**Cross-References**

GENERAL

Objections to tender — waiver, 28-1-1112.
Objections to mode of offer — waiver, 28-1-1212.
Modification of contracts, Title 28, ch. 2, part 16.
Letters of credit, Title 30, ch. 5.

DEFINITIONAL

Buyer, 30-2-103.
Fault, 30-1-201.
Party, 30-1-201.
Seller, 30-2-103.

**30-2-615. Excuse by failure of presupposed conditions.** Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections (2) and (3) is not a breach of the seller's duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in subsection (1) affect only a part of the seller's capacity to perform, the seller must allocate production and deliveries among its customers but may at its option include regular customers not then under contract as well as its own requirements for further manufacture. The seller may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under subsection (2), of the estimated quota thus made available for the buyer.

**History:** **En. Sec. 2-615, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-615; amd. Sec. 872, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

What conditions must be performed before requiring performance by another, 28-1-406.
When delay or failure to perform or offer to perform excused, 28-1-1301.
Effect when performance prevented by other causes, 28-1-1303.
Purposes — rules of construction — variation by agreement, 30-1-102.
Obligation of good faith, 30-1-203.
Unconscionable contract or clause, 30-2-302.
Output, requirements, and exclusive dealings, 30-2-306.
Right to adequate assurance of performance, 30-2-609.
Casualty to identified goods, 30-2-613.
Substituted performance, 30-2-614.
Procedure on notice claiming excuse, 30-2-616.

DEFINITIONAL

Between merchants, 30-2-104.
Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201.
Merchant, 30-2-104.

Notifies, 30-1-201.
Seasonably, 30-1-204.
Seller, 30-2-103.

**30-2-616. Procedure on notice claiming excuse.** (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section it may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (30-2-612), then also as to the whole:

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take its available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

**History: En. Sec. 2-616, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-616; amd. Sec. 873, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Modification of contracts, Title 28, ch. 2, part 16.
Extinction of contracts — rescission, Title 28, ch. 2, part 17.
Modification, rescission, and waiver, 30-2-209.
Excuse by failure of presupposed conditions, 30-2-615.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Installment contract, 30-2-612.
Notification, 30-1-201.
Reasonable time, 30-1-204.
Seller, 30-2-103.
Termination, 30-2-106.
Written, 30-1-201.

## Part 7
## Remedies

**Part Cross-References**

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

**30-2-701. Remedies for breach of collateral contracts not impaired.** Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

**History: En. Sec. 2-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-701.**

**Cross-References**

GENERAL

Breach of contract, 27-1-311.
Breach of obligation other than contract, 27-1-317.
When several contracts taken together, 28-3-203.

DEFINITIONAL

Contract for sale, 30-2-106.
Remedy, 30-1-201.

**30-2-702. Seller's remedies on discovery of buyer's insolvency.** (1) Where the seller discovers the buyer to be insolvent the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent the seller may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

**History:** **En. Sec. 2-702, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-702; amd. Sec. 6, Ch. 402, L. 1983; amd. Sec. 874, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.
Buyer's right to goods on seller's insolvency, 30-2-502.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Buyer in ordinary course of business, 30-1-201.
Contract, 30-1-201.
Good faith, 30-1-201.
Goods, 30-2-105.
Insolvent, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Rights, 30-1-201.
Seller, 30-2-103.
Writing, 30-1-201.

**30-2-703. Seller's remedies in general.** Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (30-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

(a) withhold delivery of such goods;
(b) stop delivery by any bailee as hereafter provided (30-2-705);
(c) proceed under the next section respecting goods still unidentified to the contract;
(d) resell and recover damages as hereafter provided (30-2-706);
(e) recover damages for nonacceptance (30-2-708) or in a proper case the price (30-2-709);
(f) cancel.

**History:** **En. Sec. 2-703, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-703.**

**Cross-References**

GENERAL

Availability of remedies — liability, Title 27, ch. 1.
Remedies to be liberally administered, 30-1-106.
"Letter of credit" term — "confirmed credit", 30-2-325.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

**30-2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.** (1) An aggrieved seller under the preceding section may:

(a) identify to the contract conforming goods not already identified if at the time the seller learned of the breach they are in the seller's possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

**History:** **En. Sec. 2-704, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-704; amd. Sec. 875, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Production of thing to be delivered, 28-1-1222.
Thing offered to be kept separate, 28-1-1223.
Seller's remedies in general, 30-2-703.
Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Aggrieved party, 30-1-201.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-705. Seller's stoppage of delivery in transit or otherwise.** (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier that has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**History: En. Sec. 2-705, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-705; amd. Sec. 22, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Manner of seller's tender of delivery, 30-2-503.
Right to adequate assurance of performance, 30-2-609.
Seller's remedies in general, 30-2-703.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Notice of election as to delivery, 30-11-206.

DEFINITIONAL

Buyer, 30-2-103.
Contract for sale, 30-2-106.
Document of title, 30-1-201.
Goods, 30-2-105.
Insolvent, 30-1-201.
Notification, 30-1-201.
Receipt of goods, 30-2-103.
Rights, 30-1-201.
Seller, 30-2-103.

**30-2-706. Seller's resale including contract for resale.** (1) Under the conditions stated in 30-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place

and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of an intention to resell.

(4) Where the resale is at public sale:

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (30-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of the buyer's security interest, as hereinafter defined (subsection (3) of 30-2-711).

**History:** **En. Sec. 2-706, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-706; amd. Sec. 876, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Passing of title — reservation for security — limited application of this section, 30-2-401.
Anticipatory repudiation, 30-2-610.
Seller's remedies on discovery of buyer's insolvency, 30-2-702.
Person in position of seller, 30-2-707.
Seller's damages for nonacceptance or repudiation, 30-2-708.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Good faith, 30-1-201, 30-2-103.
Goods, 30-2-105.
Merchant, 30-2-104.
Notification, 30-1-201.
Person in position of seller, 30-2-707.
Purchase, 30-1-201.
Rights, 30-1-201.
Sale, 30-2-106.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-707. "Person in the position of a seller".** (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of the principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (30-2-705) and resell (30-2-706) and recover incidental damages (30-2-710).

**History:** **En. Sec. 2-707, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-707; amd. Sec. 877, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Transfer of rights and duties under obligation, Title 28, ch. 1, part 10.
Rights of financing agency, 30-2-506.
Letters of credit, Title 30, ch. 5.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Consignee, 30-7-102.
Consignor, 30-7-102.
Goods, 30-2-105.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-708. Seller's damages for nonacceptance or repudiation.** (1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (30-2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (30-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

**History:** **En. Sec. 2-708, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-708.**

**Cross-References**

GENERAL

Acceptance to be absolute, 28-2-504.
F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.
C.I.F. or C.&F. — "net landed weights" — "payment on arrival" — warranty of condition on arrival, 30-2-321.
Delivery "ex-ship", 30-2-322.
Form of bill of lading required in overseas shipment — "overseas", 30-2-323.
"No arrival, no sale" term, 30-2-324.
Manner of seller's tender of delivery, 30-2-503.
Action for price, 30-2-709.
Admissibility of market quotations, 30-2-724.
When seller may resell, 30-11-202.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Seller, 30-2-103.

**30-2-709. Action for the price.** (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price the seller must hold for the buyer any goods which have been identified to the contract and are still in the seller's control except that if resale becomes possible the seller may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles the buyer to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (30-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

**History:** **En. Sec. 2-709, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-709; amd. Sec. 878, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Remedies to be liberally administered, 30-1-106.
Insurable interest in goods — manner of identification of goods, 30-2-501.
Risk of loss in absence of breach, 30-2-509.
Effect of breach on risk of loss, 30-2-510.
Seller's right to identify goods to contract notwithstanding breach or to salvage unfinished goods, 30-2-704.
Seller's damages for nonacceptance or repudiation, 30-2-708.
Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-710. Seller's incidental damages.** Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

**History: En. Sec. 2-710, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-710.**

**Cross-References**

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Seller, 30-2-103.

**30-2-711. Buyer's remedies in general — buyer's security interest in rejected goods.** (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (30-2-612), the buyer may cancel and whether or not the buyer has done so may in addition to recovering so much of the price as has been paid:

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this chapter (30-2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) if the goods have been identified recover them as provided in this chapter (30-2-502); or

(b) in a proper case obtain specific performance or recover the goods as provided in this chapter (30-2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in the buyer's possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (30-2-706).

**History: En. Sec. 2-711, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-711; amd. Sec. 879, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Remedies to be liberally administered, 30-1-106.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
Buyer's rights on improper delivery, 30-2-601.
Revocation of acceptance in whole or in part, 30-2-608.
Buyer's damages for breach in regard to accepted goods, 30-2-714.

DEFINITIONAL

Aggrieved party, 30-1-201.
Buyer, 30-2-103.
Cancellation, 30-2-106.
Contract, 30-1-201.
Cover, 30-2-712.
Goods, 30-2-105.
Notifies, 30-1-201.
Receipt of goods, 30-2-103.
Remedy, 30-1-201.
Security interest, 30-1-201.
Seller, 30-2-103.

**30-2-712. "Cover" — buyer's procurement of substitute goods.** (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (30-2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar the buyer from any other remedy.

**History:** **En. Sec. 2-712, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-712; amd. Sec. 880, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Time — reasonable time — "seasonably", 30-1-204.
Seller's resale including contract for resale, 30-2-706.
Buyer's damages for nondelivery or repudiation, 30-2-713.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Good faith, 30-2-103.
Goods, 30-2-105.
Purchase, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.

**30-2-713. Buyer's damages for nondelivery or repudiation.** (1) Subject to the provisions of this chapter with respect to proof of market price (30-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (30-2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

**History:** **En. Sec. 2-713, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-713.**

**Cross-References**

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Remedies to be liberally administered, 30-1-106.
Cure by seller of improper tender or delivery — replacement, 30-2-508.
"Cover" — buyer's procurement of substitute goods, 30-2-712.
Buyer's right to specific performance or recovery of goods, 30-2-716.

DEFINITIONAL

Buyer, 30-2-103.
Contract, 30-1-201.
Seller, 30-2-103.

**30-2-714. Buyer's damages for breach in regard to accepted goods.** (1) Where the buyer has accepted goods and given notification (subsection (3) of 30-2-607) the buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

**History:** **En. Sec. 2-714, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-714; amd. Sec. 881, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Revocation of acceptance in whole or in part, 30-2-608.

Buyer's remedies in general — buyer's security interest in rejected goods, 30-2-711.
Buyer's damages for nondelivery or repudiation, 30-2-713.
Buyer's incidental and consequential damages, 30-2-715.
Deduction of damages from price, 30-2-717.

DEFINITIONAL

Buyer, 30-2-103.
Conform, 30-2-106.
Goods, 30-2-105.
Notification, 30-1-201.
Seller, 30-2-103.

**30-2-715. Buyer's incidental and consequential damages.** (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

**History: En. Sec. 2-715, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-715.**

**Cross-References**

GENERAL

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Creditor's retention of thing that creditor refuses to accept, 28-1-1113.
Remedies to be liberally administered, 30-1-106.
Obligation of good faith, 30-1-203.
Third-party beneficiaries of warranties express or implied, 30-2-318.
Revocation of acceptance in whole or in part, 30-2-608.
Excuse by failure of presupposed conditions, 30-2-615.
Contractual modification or limitation of remedy, 30-2-719.

DEFINITIONAL

Cover, 30-2-712.
Goods, 30-2-105.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Seller, 30-2-103.

**30-2-716. Buyer's right to specific performance or recovery of goods.** (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right to maintain an action for recovery of the goods vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

**History: En. Sec. 2-716, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-716; amd. Sec. 136, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

When specific performance of obligation may be compelled, 27-1-411.
Rights of seller's creditors against sold goods, 30-2-402.
Buyer's right to goods on seller's insolvency, 30-2-502.
Action for price, 30-2-709.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

DEFINITIONAL

Buyer, 30-2-103.
Goods, 30-2-105.
Rights, 30-1-201.

**30-2-717. Deduction of damages from the price.** The buyer on notifying the seller of an intention to do so may deduct all or any part of the damages resulting from any breach of contract from any part of the price still due under the same contract.

**History:** En. Sec. 2-717, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-717; amd. Sec. 882, Ch. 56, L. 2009.

**Cross-References**

GENERAL

Damages — when replacement value to be allowed, 27-1-306.
Right to adequate assurance of performance, 30-2-609.

DEFINITIONAL

Buyer, 30-2-103.
Notifies, 30-1-201.

**30-2-718. Liquidation or limitation of damages — deposits.** (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of the buyer's payments exceeds:

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1); or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1); and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, the resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (30-2-706).

**History:** En. Sec. 2-718, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-718; amd. Sec. 883, Ch. 56, L. 2009.

**Cross-References**

GENERAL

Limitation of damages for breach of obligation, 27-1-303.
Deposit of money offered in payment, 28-1-1225.
Unconscionable contract or clause, 30-2-302.

DEFINITIONAL

Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Buyer, 30-2-103.
Goods, 30-2-105.
Notice, 30-1-201.
Party, 30-1-201.
Remedy, 30-1-201.
Seller, 30-2-103.
Term, 30-1-201.

**30-2-719. Contractual modification or limitation of remedy.** (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

**History: En. Sec. 2-719, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-719.**

**Cross-References**

GENERAL

Contracts that violate policy of law — exemption from responsibility, 28-2-702.
Restraints upon legal proceedings void, 28-2-708.
When provision fixing liquidated damages valid, 28-2-721.
Remedies to be liberally administered, 30-1-106.
Unconscionable contract or clause, 30-2-302.
Exclusion or modification of warranties, 30-2-316.

DEFINITIONAL

Agreement, 30-1-201.
Buyer, 30-2-103.
Conforming, 30-2-106.
Contract, 30-1-201.
Goods, 30-2-105.
Remedy, 30-1-201.
Seller, 30-2-103.

**30-2-720. Effect of "cancellation" or "rescission" on claims for antecedent breach.** Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

**History: En. Sec. 2-720, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-720.**

**Cross-References**

GENERAL

Breach of contract, 27-1-311.
Rescission of contracts, Title 28, ch. 2, part 17.
Waiver or renunciation of claim or right after breach, 30-1-107.

DEFINITIONAL

Cancellation, 30-2-106.
Contract, 30-1-201.

**30-2-721. Remedies for fraud.** Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

**History: En. Sec. 2-721, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-721.**

**Cross-References**

GENERAL

Kinds of fraud, 28-2-404.
What constitutes actual fraud, 28-2-405.
What constitutes constructive fraud, 28-2-406.

DEFINITIONAL

Contract for sale, 30-2-106.
Goods, 30-2-105.
Remedy, 30-1-201.

**30-2-722. Who can sue third parties for injury to goods.** Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, the party plaintiff's suit or settlement is, subject to its own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

**History: En. Sec. 2-722, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-722; amd. Sec. 884, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Rights arising out of obligation transferable, 28-1-1001.
Casualty to identified goods, 30-2-613.

DEFINITIONAL

Action, 30-1-201.
Buyer, 30-2-103.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Rights, 30-1-201.
Security interest, 30-1-201.

**30-2-723. Proof of market price — time and place.** (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (30-2-708 or 30-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until that party has given the other party such notice as the court finds sufficient to prevent unfair surprise.

**History: En. Sec. 2-723, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-723; amd. Sec. 885, Ch. 56, L. 2009.**

**Cross-References**

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Goods, 30-2-105.
Notifies, 30-1-201.
Party, 30-1-201.
Reasonable time, 30-1-204.
Usage of trade, 30-1-205.

**30-2-724. Admissibility of market quotations.** Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

**History: En. Sec. 2-724, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-724.**

**Cross-References**

GENERAL

Proof of market price — time and place, 30-2-723.

DEFINITIONAL

Goods, 30-2-105.

**30-2-725. Statute of limitations in contracts for sale.** (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made,

except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this code becomes effective.

**History: En. Sec. 2-725, Ch. 264, L. 1963; R.C.M. 1947, 87A-2-725.**

**Cross-References**

GENERAL

Statute of limitations — actions based on contract or other obligation, 27-2-202.
Regulated public utilities — backbilling for errors limited to 6 months, 69-3-221.

DEFINITIONAL

Action, 30-1-201.
Aggrieved party, 30-1-201.
Agreement, 30-1-201.
Contract for sale, 30-2-106.
Goods, 30-2-105.
Party, 30-1-201.
Remedy, 30-1-201.
Term, 30-1-201.
Termination, 30-2-106.

# CHAPTER 2A
# UNIFORM COMMERCIAL CODE
# LEASES

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## Part 1
## General Provisions

**30-2A-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Leases.

**History:** **En. Sec. 7, Ch. 410, L. 1991.**

**30-2A-102. Scope.** (1) This chapter applies to any transaction, regardless of form, that creates a lease and, in the case of a hybrid lease, this chapter applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this chapter that relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(ii) 30-2A-209 applies if the lease is a finance lease; and

(iii) 30-2A-407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this chapter applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease that do not relate to the lease of goods.

**History: En. Sec. 8, Ch. 410, L. 1991; amd. Sec. 13, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 13, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-2A-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

(j) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(k) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(l) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(m) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(n) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(o) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(p) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(q) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(r) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(s) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(t) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(u) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(v) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(w) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(x) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(y) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(z) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(aa) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:
(a) "Accessions". 30-2A-310(1).
(b) "Construction mortgage". 30-2A-309(1)(d).
(c) "Encumbrance". 30-2A-309(1)(e).
(d) "Fixtures". 30-2A-309(1)(a).
(e) "Fixture filing". 30-2A-309(1)(b).
(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:
(a) "Account". 30-9A-102(1)(b).
(b) "Between merchants". 30-2-104(3).
(c) "Buyer". 30-2-103(1)(a).
(d) "Chattel paper". 30-9A-102(1)(l).
(e) "Consumer goods". 30-9A-102(1)(x).
(f) "Document". 30-9A-102(1)(gg).
(g) "Entrusting". 30-2-403(3).
(h) "General intangible". 30-9A-102(1)(rr).
(i) "Good faith". 30-2-103(1)(b).
(j) "Instrument". 30-9A-102(1)(ww).
(k) "Merchant". 30-2-104(1).
(l) "Mortgage". 30-9A-102(1)(fff).
(m) "Pursuant to commitment". 30-9A-102(1)(ttt).
(n) "Receipt". 30-2-103(1)(c).
(o) "Sale". 30-2-106(1).
(p) "Sale on approval". 30-2-326.
(q) "Sale or return". 30-2-326.
(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History: En. Sec. 9, Ch. 410, L. 1991; amd. Sec. 137, Ch. 305, L. 1999; amd. Sec. 23, Ch. 575, L. 2005; amd. Sec. 886, Ch. 56, L. 2009; amd. Sec. 1, Ch. 75, L. 2013; amd. Sec. 14, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 14, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-2A-104. Leases subject to other law.** (1) A lease, although subject to this chapter, is also subject to any applicable:
(a) certificate of title statute of this state;
(b) certificate of title statute of another jurisdiction (30-2A-105); or
(c) consumer protection statute of this state or final consumer protection decision of a court of this state existing on October 1, 1991.

(2) In case of conflict between this chapter, other than 30-2A-105, 30-2A-304(3), and 30-2A-305(3), and a statute or decision referred to in subsection (1) of this section, the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

**History: En. Sec. 10, Ch. 410, L. 1991.**

**Cross-References**

Unfair trade practices and consumer protection, Title 30, ch. 14.

Certificates of title — motor vehicles, Title 61, ch. 3.

**30-2A-105. Territorial application of chapter to goods covered by certificate of title.** Subject to the provisions of 30-2A-304(3) and 30-2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

**History: En. Sec. 11, Ch. 410, L. 1991.**

**Cross-References**

Montana Procurement Act — application, 18-4-132.

Territorial Application of Code — parties power to choose applicable law, 30-1-301.

**30-2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.** (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

**History: En. Sec. 12, Ch. 410, L. 1991.**

**30-2A-107. Waiver or renunciation of claim or right after default.** Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a waiver or renunciation in a signed record delivered by the aggrieved party.

**History: En. Sec. 13, Ch. 410, L. 1991; amd. Sec. 15, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 15, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-2A-108. Unconscionability.** (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) if the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney fees to the lessee;

(b) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action the lessee knew to be groundless, the court shall award reasonable attorney fees to the party against whom the claim is made;

(c) in determining attorney fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

**History: En. Sec. 14, Ch. 410, L. 1991; amd. Sec. 887, Ch. 56, L. 2009.**

**Cross-References**

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

**30-2A-109. Option to accelerate at will.** (1) A term providing that one party or the party's successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when the party deems itself insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

**History: En. Sec. 15, Ch. 410, L. 1991; amd. Sec. 888, Ch. 56, L. 2009.**

## Part 2
## Formation and Construction of Lease Contract

**Part Cross-References**

General definitions and principles of interpretation, Title 30, ch. 1, part 2.
Plain language in contracts, Title 30, ch. 14, part 11.

**30-2A-201. Statute of frauds.** (1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(b) there is a record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the record.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

**History: En. Sec. 16, Ch. 410, L. 1991; amd. Sec. 16, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 16, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

What contracts must be writing 28-2-903.

**30-2A-202. Final expression — parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement.

**History: En. Sec. 17, Ch. 410, L. 1991; amd. Sec. 17, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 17, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

**30-2A-203. Seals inoperative.** The affixing of a seal to a record evidencing a lease contract or an offer to enter into a lease contract does not render the record a sealed instrument, and the law with respect to sealed instruments does not apply to the lease contract or offer.

**History: En. Sec. 18, Ch. 410, L. 1991; amd. Sec. 18, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 18, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-2A-204. Formation in general.** (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties that recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

**History: En. Sec. 19, Ch. 410, L. 1991.**

**Cross-References**

Montana Procurement Act — contract clauses, 18-4-224.

**30-2A-205. Firm offers.** An offer by a merchant to lease goods to or from another person in a signed record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**History: En. Sec. 20, Ch. 410, L. 1991; amd. Sec. 19, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 19, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-2A-206. Offer and acceptance in formation of lease contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**History: En. Sec. 21, Ch. 410, L. 1991.**

**30-2A-207. Course of performance or practical construction.** (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of 30-2A-208 on modification and waiver, course of performance is relevant to show a modification or waiver of any term inconsistent with the course of performance.

**History:** En. Sec. 22, Ch. 410, L. 1991.

**30-2A-208. Modification, rescission, and waiver.** (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed record may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**History:** En. Sec. 23, Ch. 410, L. 1991; amd. Sec. 20, Ch. 200, L. 2025.

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 20, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Modification of contracts, Title 28, Ch. 2, part 16.
Rescission of contracts, Title 28, ch. 2, part 17.

**30-2A-209. Lessee under finance lease as beneficiary of supply contract.** (1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee provided for under subsection (1) does not:

(a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless before the modification or rescission the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is considered to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier that arise from an agreement between the lessee and the supplier or under other law.

**History:** En. Sec. 24, Ch. 410, L. 1991.

**30-2A-210. Express warranties.** (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

**History: En. Sec. 25, Ch. 410, L. 1991.**

**Cross-References**

Wheelchairs, Title 30, ch. 14, part 12.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

Title warranty of livestock sold, 81-8-233.

**30-2A-211. Warranties against interference and against infringement — lessee's obligation against infringement.** (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, that will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor, who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

**History: En. Sec. 26, Ch. 410, L. 1991.**

**30-2A-212. Implied warranty of merchantability.** (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

**History: En. Sec. 27, Ch. 410, L. 1991.**

**30-2A-213. Implied warranty of fitness for particular purpose.** Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**History: En. Sec. 28, Ch. 410, L. 1991.**

**30-2A-214. Exclusion or modification of warranties.** (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable as consistent with each other; but, subject to the provisions of 30-2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it, the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness, the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties

of fitness is sufficient if it is in writing, is conspicuous, and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding subsection (2), but subject to subsection (4):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions, such as "as is" or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (30-2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

**History:** **En. Sec. 29, Ch. 410, L. 1991.**

**30-2A-215. Cumulation and conflict of warranties express or implied.** Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**History:** **En. Sec. 30, Ch. 410, L. 1991.**

**30-2A-216. Third-party beneficiaries of express and implied warranties.** A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

**History:** **En. Sec. 31, Ch. 410, L. 1991.**

**30-2A-217. Identification.** Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

**History:** **En. Sec. 32, Ch. 410, L. 1991.**

**30-2A-218. Insurance and proceeds.** (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

**History:** **En. Sec. 33, Ch. 410, L. 1991.**

**30-2A-219. Risk of loss.** (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss (30-2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier, but if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (2)(a) or (2)(b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor or, in the case of a finance lease, the supplier is a merchant; otherwise the risk passes to the lessee on tender of delivery.

**History:** **En. Sec. 34, Ch. 410, L. 1991.**

**30-2A-220. Effect of default on risk of loss.** (1) When risk of loss is to pass to the lessee and the time of passage is not stated:

(a) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor or, in the case of a finance lease, the supplier until cure or acceptance.

(b) if the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in its effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor or, in the case of a finance lease, the supplier, to the extent of any deficiency in its effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

**History:** **En. Sec. 35, Ch. 410, L. 1991; amd. Sec. 889, Ch. 56, L. 2009.**

**30-2A-221. Casualty to identified goods.** If a lease contract requires goods identified when the lease contract is made and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery or if the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 30-2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

**History:** **En. Sec. 36, Ch. 410, L. 1991; amd. Sec. 890, Ch. 56, L. 2009.**

## Part 3
## Effect of Lease Contract

**Part Cross-References**
Contracts and Other Obligations, Title 28.

**30-2A-301. Enforceability of lease contract.** Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.

**History: En. Sec. 37, Ch. 410, L. 1991.**

**30-2A-302. Title to and possession of goods.** Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

**History: En. Sec. 38, Ch. 410, L. 1991.**

**30-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.** (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9A, secured transactions, by reason of 30-9A-109(1)(c).

(2) Except as provided in 30-9A-407 and subsection (3) of this section, a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection (4).

(4) Subject to 30-9A-407 and subsection (3) of this section:

(a) if a transfer is made that is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 30-2A-501;

(b) if subsection (4)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

**History:** **En. Sec. 39, Ch. 410, L. 1991; amd. Sec. 138, Ch. 305, L. 1999.**

**30-2A-304. Subsequent lease of goods by lessor.** (1) Subject to 30-2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in 30-2A-527(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check that is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**History:** **En. Sec. 40, Ch. 410, L. 1991.**

**30-2A-305. Sale or sublease of goods by lessee.** (1) Subject to the provisions of 30-2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer and, except as provided in 30-2A-511(4) and subsection (2) of this section, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease, the lessee has that power even though:

(a) the lessor was deceived as to the identity of the lessee;

(b) the delivery was in exchange for a check that is later dishonored; or

(c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**History:** **En. Sec. 41, Ch. 410, L. 1991.**

**30-2A-306. Priority of certain liens arising by operation of law.** If a person in the ordinary course of business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

**History:** **En. Sec. 42, Ch. 410, L. 1991.**

**Cross-References**
Liens, Title 71, ch. 3.

**30-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.** (1) Except as otherwise provided in 30-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in 30-2A-306, 30-2A-308, and subsection (3) of this section, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in 30-9A-317, 30-9A-321, and 30-9A-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

**History: En. Sec. 43, Ch. 410, L. 1991; amd. Sec. 139, Ch. 305, L. 1999.**

**30-2A-308. Special rights of creditors.** (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract:

(a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like; and

(b) is made under circumstances that under any statute or rule of law apart from this chapter would constitute the transaction as a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

**History: En. Sec. 44, Ch. 410, L. 1991.**

**30-2A-309. Lessor's and lessee's rights when goods become fixtures.** (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9A-502(1) and (2);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) but otherwise subject to the provisions of subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter or if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9A).

**History: En. Sec. 45, Ch. 410, L. 1991; amd. Sec. 140, Ch. 305, L. 1999.**

**30-2A-310. Lessor's and lessee's rights when goods become accessions.** (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of:

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) and (4) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter or if necessary to enforce the lessor's or lessee's other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but the lessor or lessee must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

**History:** **En. Sec. 46, Ch. 410, L. 1991; amd. Sec. 891, Ch. 56, L. 2009.**

**30-2A-311. Priority subject to subordination.** Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

**History:** **En. Sec. 47, Ch. 410, L. 1991.**

## Part 4

## Performance of Lease Contract Repudiated, Substituted, and Excused

**Part Cross-References**

Performance, offer of performance, and prevention of performance, Title 28, ch. 1, parts 11 through 13.

**30-2A-401. Insecurity — adequate assurance of performance.** (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

**History:** **En. Sec. 48, Ch. 410, L. 1991; amd. Sec. 892, Ch. 56, L. 2009.**

**30-2A-402. Anticipatory repudiation.** If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to 30-2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (30-2A-524).

**History:** **En. Sec. 49, Ch. 410, L. 1991.**

**30-2A-403. Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under 30-2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**History: En. Sec. 50, Ch. 410, L. 1991.**

**30-2A-404. Substituted performance.** (1) If without fault of the lessee, the lessor, and the supplier the agreed berthing, loading, or unloading facilities fail, the agreed type of carrier becomes unavailable, or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent and if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

**History: En. Sec. 51, Ch. 410, L. 1991.**

**30-2A-405. Excused performance.** Subject to 30-2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee.

**History: En. Sec. 52, Ch. 410, L. 1991; amd. Sec. 893, Ch. 56, L. 2009.**

**30-2A-406. Procedure on excused performance.** (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under 30-2A-405, the lessee may by written notification to the lessor as to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510):

(a) terminate the lease contract (30-2A-505(2)); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under 30-2A-402, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

**History: En. Sec. 53, Ch. 410, L. 1991.**

**30-2A-407. Irrevocable promises — finance leases.** (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties and by or against third parties, including assignees of the parties; and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

**History:** **En. Sec. 54, Ch. 410, L. 1991.**

## Part 5
## Default

**Part Cross-References**

Remedies to be liberally administered, 30-1-106.

**30-2A-501. Default — procedure.** (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in 30-1-106(1), this chapter, or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

**History:** **En. Sec. 55, Ch. 410, L. 1991.**

**30-2A-502. Notice after default.** Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

**History:** **En. Sec. 56, Ch. 410, L. 1991.**

**30-2A-503. Modification or impairment of rights and remedies.** (1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under 30-2A-504 or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

**History:** **En. Sec. 57, Ch. 410, L. 1991.**

**30-2A-504. Liquidation of damages.** (1) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to a lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages and such provision does not comply with subsection (1) or if such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (30-2A-525 or 30-2A-526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20% of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term or, in the case of a consumer lease, the lesser of such amount or $500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1) of this section; and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

**History: En. Sec. 58, Ch. 410, L. 1991; amd. Sec. 894, Ch. 56, L. 2009.**

**30-2A-505. Cancellation and termination — effect of cancellation, termination, rescission, or fraud on rights and remedies.** (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be considered inconsistent with a claim for damages or other right or remedy.

**History: En. Sec. 59, Ch. 410, L. 1991.**

**30-2A-506. Statute of limitations.** (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued. By the original lease contract, the parties may reduce the period of limitation to not less than 1 year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations, nor does it apply to causes of action that have accrued before this chapter becomes effective.

**History: En. Sec. 60, Ch. 410, L. 1991.**

**30-2A-507. Proof of market rent — time and place.** (1) Damages based on market rent (30-2A-519 or 30-2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term that in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until the party has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

**History: En. Sec. 61, Ch. 410, L. 1991; amd. Sec. 895, Ch. 56, L. 2009.**

**30-2A-508. Lessee's remedies.** (1) If a lessor fails to deliver the goods in conformity to the lease contract (30-2A-509) or repudiates the lease contract (30-2A-402) or if a lessee rightfully rejects the goods (30-2A-509) or justifiably revokes acceptance of the goods (30-2A-517), then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract (30-2A-505(1));

(b) recover so much of the rent and security as has been paid and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (30-2A-518 and 30-2A-520) or recover damages for nondelivery (30-2A-519 and 30-2A-520);

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (30-2A-522); or

(b) in a proper case, obtain specific performance or replevy the goods (30-2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in 30-2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (30-2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to 30-2A-527(5).

(6) Subject to the provisions of 30-2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

**History: En. Sec. 62, Ch. 410, L. 1991.**

**30-2A-509. Lessee's rights on improper delivery — rightful rejection.** (1) Subject to the provisions of 30-2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

**History:** **En. Sec. 63, Ch. 410, L. 1991.**

**30-2A-510. Installment lease contracts — rejection and default.** (1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

**History:** **En. Sec. 64, Ch. 410, L. 1991.**

**30-2A-511. Merchant lessee's duties as to rightfully rejected goods.** (1) Subject to any security interest of a lessee (30-2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1) of this section) or any other lessee (30-2A-512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10% of the gross proceeds.

(3) In complying with 30-2A-512 or this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to 30-2A-512 or this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

**History:** **En. Sec. 65, Ch. 410, L. 1991; amd. Sec. 896, Ch. 56, L. 2009.**

**30-2A-512. Lessee's duties as to rightfully rejected goods.** (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (30-2A-511) and subject to any security interest of a lessee (30-2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account, ship them to the lessor or the supplier, or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in 30-2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

**History:** **En. Sec. 66, Ch. 410, L. 1991.**

**30-2A-513. Cure by lessor of improper tender or delivery — replacement.** (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

**History:** **En. Sec. 67, Ch. 410, L. 1991; amd. Sec. 897, Ch. 56, L. 2009.**

**30-2A-514. Waiver of lessee's objections.** (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (30-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

**History:** **En. Sec. 68, Ch. 410, L. 1991; amd. Sec. 24, Ch. 575, L. 2005.**

**30-2A-515. Acceptance of goods.** (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (30-2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**History:** **En. Sec. 69, Ch. 410, L. 1991.**

**30-2A-516. Effect of acceptance of goods — notice of default — burden of establishing default after acceptance — notice of claim or litigation to person answerable over.** (1) A lessee shall pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance may not be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance may not be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (30-2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend, that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like (30-2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (30-2A-211).

**History:** **En. Sec. 70, Ch. 410, L. 1991.**

**30-2A-517. Revocation of acceptance of goods.** (1) A lessee may revoke acceptance of a lot or commercial unit the nonconformity of which substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods that is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

**History: En. Sec. 71, Ch. 410, L. 1991.**

**30-2A-518. Cover — substitute goods.** (1) After a default by a lessor under the lease contract of the type described in 30-2A-508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 30-2A-519 governs.

**History: En. Sec. 72, Ch. 410, L. 1991; amd. Sec. 25, Ch. 575, L. 2005.**

**30-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under 30-2A-518(2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (30-2A-516(3)), the measure of damages for nonconforming tender or delivery or other default

by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**History:** **En. Sec. 73, Ch. 410, L. 1991; amd. Sec. 26, Ch. 575, L. 2005.**

**30-2A-520. Lessee's incidental and consequential damages.** (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked; any commercially reasonable charges; expenses or commissions in connection with effecting cover; and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and that could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

**History:** **En. Sec. 74, Ch. 410, L. 1991.**

**30-2A-521. Lessee's right to specific performance or replevin.** (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court considers just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

**History:** **En. Sec. 75, Ch. 410, L. 1991.**

**30-2A-522. Lessee's right to goods on lessor's insolvency.** (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (30-2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

**History:** **En. Sec. 76, Ch. 410, L. 1991.**

**30-2A-523. Lessor's remedies.** (1) If a lessee wrongfully rejects or revokes acceptance of goods, fails to make a payment when due, or repudiates with respect to a part or the whole, then with respect to any goods involved and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (30-2A-510), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract (30-2A-505(1));

(b) proceed respecting goods not identified to the lease contract (30-2A-524);

(c) withhold delivery of the goods and take possession of goods previously delivered (30-2A-525);

(d) stop delivery of the goods by any bailee (30-2A-526);

(e) dispose of the goods and recover damages (30-2A-527), retain the goods and recover damages (30-2A-528), or in a proper case, recover rent (30-2A-529);

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

**History: En. Sec. 77, Ch. 410, L. 1991.**

**30-2A-524. Lessor's right to identify goods to lease contract.** (1) If a lessee under a lease contract defaults as described in 30-2A-523 or, if agreed, after other default by the lessee, a lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (30-2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

**History: En. Sec. 78, Ch. 410, L. 1991.**

**30-2A-525. Lessor's right to possession of goods.** (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor that is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises (30-2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

**History: En. Sec. 79, Ch. 410, L. 1991.**

**30-2A-526. Lessor's stoppage of delivery in transit or otherwise.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**History: En. Sec. 80, Ch. 410, L. 1991; amd. Sec. 27, Ch. 575, L. 2005.**

**30-2A-527. Lessor's rights to dispose of goods.** (1) After a default by a lessee under the lease contract described in 30-2A-523(1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (30-2A-525 or 30-2A-526) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 30-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (30-2A-508(5)).

**History: En. Sec. 81, Ch. 410, L. 1991; amd. Sec. 28, Ch. 575, L. 2005.**

**30-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (30-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 30-2A-527(2) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 30-2A-523(1) or (3)(a) or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, that the lessor would have made from full performance by the lessee, together with any incidental damages allowed under 30-2A-530, allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition.

**History: En. Sec. 82, Ch. 410, L. 1991; amd. Sec. 29, Ch. 575, L. 2005.**

**30-2A-529. Lessor's action for rent.** (1) After default by the lessee under the lease contract of the type described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (30-2A-219):

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by 30-2A-527 or 30-2A-528 and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to 30-2A-527 or 30-2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) If a lessee under a lease contract defaults as described in 30-2A-523(1) or (3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under 30-2A-527 or 30-2A-528.

**History: En. Sec. 83, Ch. 410, L. 1991.**

**30-2A-530. Lessor's incidental damages.** Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery; in the transportation, care, and custody of goods after the lessee's default; in connection with return or disposition of the goods; or otherwise resulting from the default.

**History: En. Sec. 84, Ch. 410, L. 1991.**

**30-2A-531. Standing to sue third parties for injury to goods.** (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(a) the lessor has a right of action against the third party; and

(b) the lessee also has a right of action against the third party if the lessee:

(i) has a security interest in the goods;

(ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the party plaintiff's suit or settlement, subject to the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

**History: En. Sec. 85, Ch. 410, L. 1991; amd. Sec. 898, Ch. 56, L. 2009.**

**30-2A-532. Lessor's rights to residual interest.** In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

**History: En. Sec. 86, Ch. 410, L. 1991.**

# CHAPTER 3
# UNIFORM COMMERCIAL CODE
# NEGOTIABLE INSTRUMENTS

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**Part 7 — Advice of International Sight Draft (Repealed)**

**Part 8 — Miscellaneous (Repealed)**

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**Chapter Cross-References**

Uniform Commercial Code — leases, Title 30, ch. 2A.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Investment securities, Title 30, ch. 8.
Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

## Part 1
## Short Title, Form, and Interpretation

**30-3-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Negotiable Instruments.

**History: En. Sec. 3-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-101; amd. Sec. 87, Ch. 410, L. 1991.**

**30-3-102. Definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Acceptor" means a drawee that has accepted a draft.
(b) "Drawee" means a person ordered in a draft to make payment.
(c) "Drawer" means a person that signs a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person that signs a note as promisor of payment.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (30-1-201(2)(h)).

(k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-3-410.
"Accommodated party". 30-3-415.
"Accommodation party". 30-3-415.
"Alteration". 30-3-407.
"Anomalous indorsement". 30-3-204.
"Blank indorsement". 30-3-204.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Consideration". 30-3-303.
"Draft". 30-3-104.
"Fiduciary". 30-3-308.
"Holder in due course". 30-3-302.
"Incomplete instrument". 30-3-115.
"Indorsement". 30-3-203.
"Indorser". 30-3-203.
"Instrument". 30-3-104.
"Issue". 30-3-125.
"Issuer". 30-3-125.
"Negotiable instrument". 30-3-104.
"Negotiation". 30-3-202.
"Note". 30-3-104.
"Payable at a definite time". 30-3-109.
"Payable on demand". 30-3-108.
"Payable to bearer". 30-3-111.
"Payable to order". 30-3-111.
"Payment". 30-3-603.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Reacquisition". 30-3-208.
"Represented person". 30-3-308.

"Special indorsement". 30-3-204.
"Teller's check". 30-3-104.
"Transfer of instrument". 30-3-210.
"Traveler's check". 30-3-104.
"Value". 30-3-303.

(3) The following definitions in other chapters apply to this chapter:
"Bank". 30-4-105.
"Banking day". 30-4-104.
"Clearinghouse". 30-4-104.
"Collecting bank". 30-4-105.
"Customer". 30-4-104.
"Depositary bank". 30-4-105.
"Documentary draft". 30-4-104.
"Intermediary bank". 30-4-105.
"Item". 30-4-104.
"Payor bank". 30-4-105.
"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History:** **En. Sec. 3-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-102; amd. Sec. 89, Ch. 410, L. 1991; amd. Sec. 30, Ch. 575, L. 2005; amd. Sec. 21, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 21, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

How presentment made, 30-3-504.

DEFINITIONAL

Bank, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Money, 30-1-201.
Person, 30-1-201.

**30-3-103. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History:** **En. Sec. 3-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-103.**

**30-3-104. Negotiable instrument.** (1) "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(b) is payable on demand or at a definite time; and

(c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money except that the promise or order may contain:

(i) an undertaking or power to give, maintain, or protect collateral to secure payment;

(ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral;

(iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor;

(iv) a term that specifies the law that governs the promise or order; or

(v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

(2) "Instrument" means a negotiable instrument.

(3) An order that meets all of the requirements of subsection (1) except subsection (1)(a) and otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.

(4) Notwithstanding the provisions of subsection (1), a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, indicating that the writing is not an instrument governed by this chapter.

(5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both note and draft, the person entitled to enforce the instrument may treat it as either.

(6) (a) "Check" means:

(i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or

(ii) a cashier's check or teller's check.

(b) An instrument may be a check even though it is described on its face by another term, such as "money order".

(7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(8) "Teller's check" means a draft drawn by a bank:

(a) on another bank; or

(b) payable at or through a bank.

(9) "Traveler's check" means an instrument that:

(a) is payable on demand;

(b) is drawn on or payable at or through a bank;

(c) is designated by the term traveler's check or by a substantially similar term; and

(d) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

**History: En. Sec. 3-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-104; amd. Sec. 90, Ch. 410, L. 1991; amd. Sec. 22, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 22, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.
When promise or order unconditional, 30-3-105.
Money, 30-3-107.
Payable on demand, 30-3-108.
Definite time, 30-3-109.
Payable to bearer, 30-3-111.
Signature, 30-3-401.
Signature by authorized representative, 30-3-403.

DEFINITIONAL

Bank, 30-1-201.
Bearer, 30-1-201.
Definite time, 30-3-109.
Money, 30-1-201.
On demand, 30-3-108.
Order, 30-3-102.
Promise, 30-3-102.
Signed, 30-1-201.
Term, 30-1-201.
Writing, 30-1-201.

**30-3-105. Unconditional promise or order.** (1) (a) Except as provided in subsections (2) and (3), for the purposes of 30-3-104(1), a promise or order is unconditional unless it states:

(i) an express condition to payment; or

(ii) that the promise or order is subject to or governed by another writing or that the rights or obligations with respect to the promise or order are stated in another writing.

(b) A mere reference to another writing does not make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration; or

(b) because payment is limited to or resorts to a particular fund or source.

(3) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of 30-3-104(1). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(4) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of 30-3-104(1), but there cannot be a holder in due course of the promise or order.

**History: En. Sec. 3-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-105; amd. Sec. 92, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Order, 30-3-102.
Promise, 30-3-102.

**30-3-106. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-106.**

**30-3-107. Instrument payable in foreign money.** Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

**History: En. Sec. 3-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-107; amd. Sec. 93, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — note, 30-3-104.
Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Instrument, 30-3-102.
Money, 30-1-201.
Order, 30-3-102.
Promise, 30-3-102.
Purchase, 30-1-201.

**30-3-108. Payable on demand.** A promise or order is "payable on demand" if:

(1) it states that it is payable on demand or at sight or otherwise indicates that it is payable at the will of the holder; or

(2) it does not state any time of payment.

**History: En. Sec. 3-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-108; amd. Sec. 94, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.
Holder in due course, 30-3-302.

DEFINITIONAL

Instrument, 30-3-102.

**30-3-109. Definite time.** (1) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to the rights of:

(a) prepayment;

(b) acceleration;

(c) extension at the option of the holder; or

(d) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

**History: En. Sec. 3-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-109; amd. Sec. 95, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Option to accelerate at will, 30-1-208.
Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.
Incomplete instruments, 30-3-115.
Notice to purchaser, 30-3-304.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Term, 30-1-201.

**30-3-110. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-110.**

**30-3-111. Payable to bearer or to order.** (1) A promise or order is "payable to bearer" if it:

(a) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(b) does not state a payee; or

(c) states that it is payable to or to the order of "cash" or otherwise indicates that it is not payable to an identified person.

(2) A promise or order that is not payable to bearer is "payable to order" if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(3) An instrument payable to bearer may become payable to an identified person if it is specially indorsed as stated in 30-3-204(1). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank as stated in 30-3-204(2).

**History: En. Sec. 3-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-111; amd. Sec. 96, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Form of negotiable instruments — "draft" — "check" — "certificate of deposit" — "note", 30-3-104.
Incomplete instruments, 30-3-115.
Special endorsement — blank endorsement, 30-3-204.
Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Bearer, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Term, 30-1-201.

**30-3-112. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-112.**

**30-3-113. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-113.**

**30-3-114. Date of instrument.** (1) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in 30-4-401(3), an instrument payable on demand is not payable before the date of the instrument.

(2) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

**History: En. Sec. 3-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-114; amd. Sec. 100, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Definite time, 30-3-109.
Incomplete instruments, 30-3-115.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Instrument, 30-3-102.
Issue, 30-3-102.
On demand, 30-3-108.
Presumed, 30-1-201.
Signature, 30-3-401.

**30-3-115. Incomplete instrument.** (1) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(2) Subject to subsection (3), if an incomplete instrument is an instrument under 30-3-104, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under 30-3-104 but, after completion, the requirements of 30-3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(3) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by 30-3-407.

(4) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

**History: En. Sec. 3-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-115; amd. Sec. 102, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Payment on demand, 30-3-108.
Date — antedating — postdating, 30-3-114.
Rights of holder in due course, 30-3-305.
Signature, 30-3-401.
Contract of maker, drawer, and acceptor, 30-3-413.

DEFINITIONAL

Alteration, 30-3-407.
Burden of establishing, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Signed, 30-1-201.

**30-3-116. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-116.**

**30-3-117. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-117.**

**30-3-118. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-118, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-118.**

**30-3-119. Other agreements affecting instrument.** Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

**History: En. Sec. 3-119, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-119; amd. Sec. 104, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

When promise or order unconditional, 30-3-105.
Notice to purchaser, 30-3-304.

DEFINITIONAL

Agreement, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Written and writing, 30-1-201.

**30-3-120. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-120, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-120.**

**30-3-121. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-121, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-121.**

**30-3-122. Statute of limitations.** (1) Except as provided in subsection (5), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the payment date or dates stated in the note or, if a payment date is accelerated, within 6 years after the accelerated payment date.

(2) Except as provided in subsection (4) or (5), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(3) Except as provided in subsection (4), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 6 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(4) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 6 years after demand for payment is made to the acceptor or issuer, as the case may be.

(5) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a maturity date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the maturity date has passed.

(6) This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within 6 years after the payment date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within 6 years after the date of the acceptance.

(7) Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or for like action based on conversion; for breach of warranty; or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within 3 years after the cause of action accrues.

**History: En. Sec. 3-122, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-122; amd. Sec. 105, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.
Contract of endorser — order of liability, 30-3-414.

DEFINITIONAL

Action, 30-1-201.
Certificate of deposit, 30-3-102.
Draft, 30-3-104.
Instrument, 30-3-102.
Note, 30-3-104.
Notice of dishonor, 30-3-508.
On demand, 30-3-108.

**30-3-123. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 593, C. Civ. Proc. 1895; re-en. Sec. 6500, Rev. C. 1907; re-en. Sec. 9092, R.C.M. 1921; re-en. Sec. 9092, R.C.M. 1935; amd. Sec. 18, Ch. 265, L. 1977; R.C.M. 1947, 93-2830.**

**30-3-124. Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated security under 30-8-112(1)(d) is subject to chapter 8 and to this chapter.

(2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter 8, or chapter 9A, the provisions of chapter 4, chapter 8, and chapter 9A prevail over those of this chapter.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

**History: En. Sec. 88, Ch. 410, L. 1991; amd. Sec. 4, Ch. 536, L. 1997.**

**30-3-125. Issue of instrument.** (1) "Issue" means:

(a) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or

(b) if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depositary bank to collect the item by transferring or presenting under federal law an electronic check.

(2) An unissued instrument or an unissued incomplete instrument (30-3-115) that is completed is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means any person that signs an instrument as maker or drawer.

**History: En. Sec. 91, Ch. 410, L. 1991; amd. Sec. 23, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 23, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-3-126. Identification of person to whom instrument is payable.** (1) A person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, signing as, in the name of, or on behalf of the maker or drawer. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or on behalf of the maker or drawer and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(2) If the signature of the maker or drawer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(3) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(a) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(b) If an instrument is payable to:

(i) a trust, estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(4) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

**History: En. Sec. 97, Ch. 410, L. 1991.**

**30-3-127. Place of payment.** Except as otherwise provided for items in chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

**History: En. Sec. 98, Ch. 410, L. 1991.**

**30-3-128. Interest.** (1) Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.

(2) Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

**History: En. Sec. 99, Ch. 410, L. 1991.**

**30-3-129. Contradictory terms of instrument.** If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

**History: En. Sec. 101, Ch. 410, L. 1991.**

**30-3-130. Joint and several liability — contribution.** (1) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who are indorsing joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in 30-3-424(5) or by agreement of the affected parties, a party with joint and several liability that pays the instrument is entitled to receive from any party with the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party with joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (2) of a party with the same joint and several liability to receive contribution from the party discharged.

**History: En. Sec. 103, Ch. 410, L. 1991.**

**30-3-131. Notice of right to defend action.** In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or chapter 4, the defendant may give the third person written notice of the litigation and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

**History: En. Sec. 106, Ch. 410, L. 1991.**

## Part 2
## Transfer and Negotiation

**30-3-201. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-201.**

**30-3-202. Negotiation.** (1) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument to a person who thereby becomes its holder if possession is obtained from a person other than the issuer of the instrument.

(2) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

**History: En. Sec. 3-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-202; amd. Sec. 107, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Endorsement — presumption as to time, 26-1-602.
Special endorsement — blank endorsement, 30-3-204.
Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Written, 30-1-201.

**30-3-203. Indorsement.** (1) "Indorsement" means a signature, other than that of a maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(2) "Indorser" means a person who makes an indorsement.

(3) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(4) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name, or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

**History: En. Sec. 3-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-203; amd. Sec. 110, Ch. 410, L. 1991.**

**Cross-References**

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

**30-3-204. Special indorsement — blank indorsement — anomalous indorsement.** (1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in 30-3-126 apply to special indorsements.

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(3) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(4) "Anomalous indorsement" means an indorsement made by a person that is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

**History: En. Sec. 3-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-204; amd. Sec. 111, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

**30-3-205. Restrictive indorsement.** (1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) The following rules apply to an instrument bearing an indorsement, described in 30-4-201(2), or in blank or to a particular bank using the words "for collection", "for deposit", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account:

(a) A person, other than a bank, that purchases the instrument when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or are applied consistently with the indorsement.

(b) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by subsection (3), the following rules apply to an instrument bearing an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person:

(a) Unless there is notice of breach of fiduciary duty as provided in 30-3-308, a person that purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A later transferee of the instrument or person that pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) Purchase of an instrument bearing an indorsement to which this section applies does not prevent the purchaser from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (3).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

**History: En. Sec. 3-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-205; amd. Sec. 112, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Payment of taxes by negotiable instrument, 15-1-421.
Negotiation, 30-3-202.
Restrictive indorsements, 30-3-205.
Notice to purchaser, 30-3-304.
Conversion of instrument — innocent representative, 30-3-419.
Payment or satisfaction, 30-3-603.
Effect of instructions, 30-4-203.
Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.

**30-3-206. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-206.**

**30-3-207. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-207.**

**30-3-208. Reacquisition.** Reacquisition of an instrument occurs if it is transferred, by negotiation or otherwise, to a former holder. A former holder that reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any late holder.

**History: En. Sec. 3-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-208; amd. Sec. 113, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Payment or satisfaction, 30-3-603.
Cancellation and renunciation, 30-3-605.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.

**30-3-209. Negotiation subject to rescission.** (1) Negotiation is effective even if obtained:

(a) from an infant, a corporation exceeding its powers, or a person without capacity; or

(b) by fraud, duress, or mistake or in breach of duty or as part of an illegal transaction.

(2) To the extent permitted by law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

**History: En. Sec. 108, Ch. 410, L. 1991.**

**30-3-210. Rights acquired by transfer.** (1) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(2) Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee may not acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the purchaser engaged in fraud or illegality affecting the instrument.

(3) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(4) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

**History: En. Sec. 109, Ch. 410, L. 1991.**

## Part 3
## Rights of a Holder

**30-3-301. Person entitled to enforce instrument.** "Person entitled to enforce" an instrument means the holder of an instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 30-3-309. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

**History: En. Sec. 3-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-301; amd. Sec. 114, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Rights, 30-1-201.

**30-3-302. Holder in due course.** (1) Subject to subsection (3) and 30-3-105(4), "holder in due course" means the holder of an instrument if:

(a) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(b) the holder took the instrument:

(i) for value;

(ii) in good faith;

(iii) without notice that it is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(iv) without notice that the instrument contains an unauthorized signature or has been altered;

(v) without notice of any claim to the instrument stated in 30-3-306; and

(vi) without notice that any party to the instrument has any defense or claim in recoupment stated in 30-3-305(1).

(2) Notice of discharge of a party to the instrument, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (1), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(3) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) by legal process or by purchase at an execution, bankruptcy, or creditor's sale or similar proceeding;

(b) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) as the successor in interest to an estate or other organization.

(4) If, under 30-3-303(1)(a), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(5) If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(6) To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

(7) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

**History: En. Sec. 3-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-302; amd. Sec. 115, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Taking for value, 30-3-303.
Notice to purchaser, 30-3-304.
Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.

DEFINITIONAL

Good faith, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Notice of dishonor, 30-3-508.
Person, 30-1-201.
Purchase, 30-1-201.
Purchaser, 30-1-201.
Value, 30-3-303.

**30-3-303. Value and consideration.** (1) An instrument is issued or transferred for value if:

(a) the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed;

(b) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceedings;

(c) the instrument is issued or transferred as payment of, or as security for, an existing obligation of any person, whether or not the obligation is due;

(d) the instrument is issued or transferred in exchange for a negotiable instrument; or

(e) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(2) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the drawer or maker has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (1), the instrument is also issued for consideration.

**History: En. Sec. 3-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-303; amd. Sec. 116, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Holder in due course, 30-3-302.
Contract of accommodation party, 30-3-415.
Warranties on presentment and transfer, 30-3-417.
When bank gives value for purposes of holder in due course, 30-4-209.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Security interest, 30-1-201.

**30-3-304. Overdue instrument.** (1) An instrument payable on demand becomes overdue at the earliest of the following times:

(a) on the day after the day demand for payment is duly made;

(b) if the instrument is a check, 90 days after its date; or

(c) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and trade usage.

(2) With respect to an instrument payable at a definite time, the following rules apply:

(a) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(b) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(c) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(3) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is a default in payment of interest but no default in payment of principal.

**History: En. Sec. 3-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-304; amd. Sec. 117, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

When promise or order unconditional, 30-3-105.
Other writings affecting instrument, 30-3-119.
Holder in due course, 30-3-302.
Alteration, 30-3-407.

DEFINITIONAL

Accommodation party, 30-3-415.
Agreement, 30-1-201.
Alteration, 30-3-407.
Bank, 30-1-201.
Check, 30-3-104.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Issue, 30-3-102.
Negotiation, 30-3-202.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Promise, 30-3-102.
Purchaser, 30-1-201.
Reasonable time, 30-1-204.
Signed, 30-1-201.
Term, 30-1-201.

**30-3-305. Defenses and claims in recoupment.** (1) Except as stated in subsection (2), the right to enforce the obligation of a party to pay the instrument is subject to the following:

(a) A defense of the obligor based on:

(i) infancy of the obligor to the extent that it is a defense to a simple contract;

(ii) duress, lack of legal capacity, or illegality of the transaction that nullifies the obligation of the obligor;

(iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(iv) discharge of the obligor in insolvency proceedings.

(b) A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.

(c) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(2) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (1)(a) but is not subject to defenses of the obligor stated in subsection (1)(b) or claims in recoupment stated in subsection (1)(c) against a person other than the holder.

(3) Except as stated in subsection (4), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (30-3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(4) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (1) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity.

**History:** **En. Sec. 3-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-305; amd. Sec. 118, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Incomplete instruments, 30-3-115.
Reacquisition, 30-3-208.
Notice to purchaser, 30-3-304.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Alteration, 30-3-407.

DEFINITIONAL

Contract, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Term, 30-1-201.

**30-3-306. Claims to an instrument.** A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

**History:** **En. Sec. 3-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-306; amd. Sec. 119, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Holder in due course, 30-3-302.
Rights of holder in due course, 30-3-305.
Burden of establishing signatures, defenses, and due course, 30-3-307.

DEFINITIONAL

Action, 30-1-201.
Contract, 30-1-201.
Delivery, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

**30-3-307. Proof of signatures and status as holder in due course.** (1) In an action with respect to an instrument, the authenticity of and authority to make each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to 30-3-403(1).

(2) If the validity of signatures is admitted or proved and there is compliance with subsection (1), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under 30-3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course that are not subject to the defense or claim.

**History:** **En. Sec. 3-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-307; amd. Sec. 121, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Holder in due course, 30-3-302.
Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Signature, 30-3-401.
Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.

DEFINITIONAL

Action, 30-1-201.
Burden of establishing, 30-1-201.
Defendant, 30-1-201.
Genuine, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Presumed, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.

**30-3-308. Notice of breach of fiduciary duty.** (1) This section applies if an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person. "Fiduciary" means an agent, trustee, partner, corporation officer or director, or other representative owing a fiduciary duty with respect to the instrument. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty is owed.

(2) If the instrument is payable to the fiduciary, as such, or to the represented person, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If the instrument is made or drawn by the fiduciary, as such, payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If the instrument is made or drawn by or on behalf of the represented person to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(a) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(b) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(c) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

**History: En. Sec. 120, Ch. 410, L. 1991.**

**30-3-309. Enforcement of lost, destroyed, or stolen instrument.** (1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred;

(b) the loss of possession was not the result of a voluntary transfer by that person or a lawful seizure; and

(c) that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument pursuant to subsection (1) shall prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, 30-3-307 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

**History:** **En. Sec. 122, Ch. 410, L. 1991.**

**30-3-310. Effect of instrument on obligation for which taken.** (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(2) Unless otherwise agreed and except as provided in subsection (1), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.

(3) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(4) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(5) If the check or note is dishonored and the obligee of the obligation for which the instrument was taken has possession of the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(6) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent, the obligee's rights against the obligor are limited to enforcement of the instrument.

(7) If an instrument other than one described in subsection (1) or (2) is taken for an obligation, the effect is:

(a) that stated in subsection (1) if the instrument is one on which a bank is liable as maker or acceptor; or

(b) that stated in subsection (2) in any other case.

**History:** **En. Sec. 123, Ch. 410, L. 1991.**

**30-3-311. Accord and satisfaction by use of instrument.** (1) This section applies if a person against whom a claim is asserted proves that:

(a) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(b) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(c) the claimant obtained payment of the instrument.

(2) Unless subsection (3) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(3) Subject to subsection (4), a claim is not discharged under subsection (2) if the claimant is an organization and proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications

concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and the instrument or accompanying communication was not received by that designated person, office, or place.

(4) Notwithstanding subsection (3), a claim is discharged under subsection (2) if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, an agent of the claimant having direct responsibility with respect to the disputed obligation knew that the instrument was tendered in full satisfaction of the claim or received the instrument and any accompanying written communication.

**History:** **En. Sec. 124, Ch. 410, L. 1991.**

**30-3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.** (1) In this section, the following definitions apply:

(a) "Check" means a cashier's check, teller's check, or certified check.

(b) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(c) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that:

(i) the declarer lost possession of a check;

(ii) the declarer is the drawer or payee of the check in the case of a certified check or the remitter or payee of the check in the case of a cashier's check or teller's check;

(iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(d) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(2) (a) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check if:

(i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check;

(iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and

(iv) the claimant provides reasonable identification if requested by the obligated bank.

(b) Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection (2), the following rules apply:

(i) The claim becomes enforceable at the later of:

(A) the time the claim is asserted; or

(B) the 90th day following the date of the check in the case of a cashier's check or teller's check or the 90th day following the date of the acceptance in the case of a certified check.

(ii) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(iii) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(iv) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to 30-4-302(1)(a), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(3) If the obligated bank pays the amount of a check to a claimant under subsection (2)(b)(iv) and the check is presented for payment by a person having the rights of a holder in due course, the claimant is obliged to:

(a) refund the payment to the obligated bank if the check is paid; or

(b) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(4) If a claimant has the right to assert a claim under subsection (2) and is also a person entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under either 30-3-309 or this section.

**History: En. Sec. 1, Ch. 33, L. 2001.**

## Part 4
## Liability of Parties

**30-3-401. Signature necessary for liability on instrument.** A person is not liable on an instrument unless:

(1) the person signed the instrument; or

(2) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under 30-3-403.

**History: En. Sec. 3-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-401; amd. Sec. 125, Ch. 410, L. 1991; amd. Sec. 24, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 24, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Negotiation, 30-3-202.
Wrong or misspelled name, 30-3-203.
Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.
Impostors — signature in name of payee, 30-3-405.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Definition and operation of acceptance, 30-3-410.

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Signed, 30-1-201.
Written, 30-1-201.

**30-3-402. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-402.**

**30-3-403. Signature by representative.** (1) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(2) If a representative signs the name of the representative to an instrument and that signature is an authorized signature of the represented person, the following rules apply:

(a) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(b) Subject to subsection (3), if the form of the signature does not show unambiguously that the signature is made in a representative capacity, or the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties to the instrument did not intend the representative to be liable on the instrument.

(3) If a representative signs the name of the representative as drawer of a check without indication of the representative's status and the check is payable from an account of the

represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

**History:** **En. Sec. 3-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-403; amd. Sec. 126, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Burden of establishing signatures, defenses, and due course, 30-3-307.
Signature, 30-3-401.
Unauthorized signatures, 30-3-404.
Impostors — signature in name of payee, 30-3-405.

DEFINITIONAL

Instrument, 30-3-102.
Person, 30-1-201.
Representative, 30-1-201.
Signature, 30-3-401.

**30-3-404. Unauthorized signatures.** (1) Unless otherwise provided in this chapter, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(2) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

(3) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter.

**History:** **En. Sec. 3-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-404; amd. Sec. 127, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Facsimile signatures or seals of public officers — misuse, 2-16-114.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Signature, 30-3-401.
Signature by authorized representative, 30-3-403.
Impostors — signature in name of payee, 30-3-405.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Issuing bad check, 45-6-316.
Forgery, 45-6-325.

DEFINITIONAL

Good faith, 30-1-201.
Instrument, 30-3-102.
Person, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Unauthorized signature, 30-1-201.
Value, 30-3-303.

**30-3-405. Impostors — fictitious payees.** (1) If an impostor by use of the mails or otherwise induces the maker or drawer of an instrument to issue the instrument to the impostor or to a person acting in concert with the impostor by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(2) If a person whose intent determines to whom an instrument is payable (30-3-126(1) or (2)) does not intend the person identified as payee to have any interest in the instrument or if the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(a) Any person in possession of the instrument is its holder.

(b) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of any person who in good faith pays the instrument or takes it for value or for collection.

(3) Under subsection (1) or (2), an indorsement is made in the name of a payee if:

(a) it is made in a name substantially similar to that of the payee; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(4) With respect to an instrument to which subsection (1) or (2) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

**History: En. Sec. 3-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-405; amd. Sec. 128, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Signature, 30-3-401.
Signature by authorized representative, 30-3-403.
Unauthorized signatures, 30-3-404.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Forgery, 45-6-325.

DEFINITIONAL

Instrument, 30-3-102.
Issue, 30-3-102.
Person, 30-1-201.
Signature, 30-3-401.

**30-3-406. Negligence contributing to forged signature or alteration of instrument.** (1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who in good faith pays the instrument or takes it for value.

(2) If the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.

**History: En. Sec. 3-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-406; amd. Sec. 130, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Signature, 30-3-401.
Unauthorized signatures, 30-3-404.
Alteration, 30-3-407.

DEFINITIONAL

Alteration, 30-3-407.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Unauthorized signature, 30-1-201.

**30-3-407. Alteration.** (1) "Alteration" means:

(a) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party to the instrument; or

(b) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of any party to the instrument.

(2) Except as provided in subsection (3), an alteration fraudulently made discharges any party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges any party, and the instrument may be enforced according to its original terms.

(3) A person paying a fraudulently altered instrument or taking it for value in good faith and without notice of the alteration may enforce rights with respect to the instrument:

(a) according to its original terms; or

(b) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

**History: En. Sec. 3-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-407; amd. Sec. 131, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Altered bill or note — limitation on action because of banks' payment, 27-2-213.
Incomplete instruments, 30-3-115.
Notice to purchaser, 30-3-304.
Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
When bank may charge customer's account, 30-4-401.

DEFINITIONAL

Contracts, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

**30-3-408. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-408, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-408.**

**30-3-409. Drawee not liable on unaccepted draft.** A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

**History: En. Sec. 3-409, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-409; amd. Sec. 132, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Definition and operation of acceptance, 30-3-410.
Acceptance varying draft, 30-3-412.
Contract of accommodation party, 30-3-415.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Acceptance, 30-3-410.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.

**30-3-410. Acceptance of draft — certified check.** (1) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(2) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(3) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(4) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (1) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

**History: En. Sec. 3-410, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-410; amd. Sec. 133, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

What constitutes acceptance of goods, 30-2-606.
Signature, 30-3-401.
Draft not assignment, 30-3-409.
Acceptance varying draft, 30-3-412.
Warranties on presentment and transfer, 30-3-417.
Conversion of instrument — innocent representative, 30-3-419.

DEFINITIONAL

Delivery, 30-1-201.
Draft, 30-3-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Honor, 30-1-201.
Notification, 30-1-201.

**30-3-411. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-411, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-411.**

**30-3-412. Acceptance varying draft.** (1) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(2) The terms of the draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(3) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

**History: En. Sec. 3-412, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-412; amd. Sec. 134, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Definition and operation of acceptance, 30-3-410.
Contract of maker, drawer, and acceptor, 30-3-413.
How presentment made, 30-3-504.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Term, 30-1-201.
Written, 30-1-201.

**30-3-413. Obligation of maker.** (1) A maker of a note is obliged to pay the note:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the maker signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the note or to an indorser that paid the note pursuant to 30-3-414.

**History: En. Sec. 3-413, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-413; amd. Sec. 136, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Treble damages for issuing bad check, 27-1-717.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Alteration, 30-3-407.
Acceptance varying draft, 30-3-412.
Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Party, 30-1-201.

**30-3-414. Obligation of indorser.** (1) Subject to subsections (2) through (4) and to 30-3-415(4), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed or if the indorser indorsed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser that paid the instrument pursuant to this section.

(2) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (1) to pay the instrument.

(3) If notice of dishonor of an instrument is required by 30-3-508 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (1) is discharged.

(4) If a draft is accepted by a bank after an indorsement is made and the acceptor dishonors the draft, the indorser is not liable under subsection (1) to pay the instrument.

(5) If an indorser of a check is liable under subsection (1) and the check is not presented for payment or given to a depositary bank for collection within 30 days after the day the indorsement was made, the liability of the indorser under subsection (1) is discharged.

**History: En. Sec. 3-414, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-414; amd. Sec. 139, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.
Warranties on presentment and transfer, 30-3-417.

DEFINITIONAL

Contract, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Presumed, 30-1-201.
Signature, 30-3-401.

**30-3-415. Instruments signed for accommodation.** (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in 30-3-607, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

**History: En. Sec. 3-415, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-415; amd. Sec. 140, Ch. 410, L. 1991; amd. Sec. 53, Ch. 10, L. 1993.**

**Cross-References**

GENERAL

Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Payment or satisfaction, 30-3-603.
Tender of payment, 30-3-604.

DEFINITIONAL

Holder in due course, 30-3-302.
Instrument, 30-3-102.
Notice, 30-1-201.
Party, 30-1-201.
Presentment, 30-3-504.
Signed, 30-1-201.
Writing, 30-1-201.

**30-3-416. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-416, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-416.**

**30-3-417. Transfer warranties.** (1) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(a) the warrantor is a person entitled to enforce the instrument;

(b) all signatures on the instrument are authentic and authorized;

(c) the instrument has not been altered;

(d) the instrument is not subject to a defense or claim in recoupment (30-3-305(1)) of any party that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) A person to whom the warranties under subsection (1) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(3) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(4) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History: En. Sec. 3-417, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-417; amd. Sec. 141, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Unauthorized signatures, 30-3-404.
Impostors — signature in name of payee, 30-3-405.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Contract of endorser — order of liability, 30-3-414.
Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.
Warranty on sale of written instrument, 30-11-220.

DEFINITIONAL

Acceptance, 30-3-410.
Alteration, 30-3-407.
Bank, 30-1-201.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder in due course, 30-3-302.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.
Signature, 30-3-401.
Term, 30-1-201.

**30-3-418. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-418, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-418.**

**30-3-419. Conversion of instrument.** (1) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if the instrument lacks an indorsement necessary for negotiation and it is purchased or taken for collection or the drawee takes the instrument and makes payment to a person not entitled to receive payment. An action for conversion of an instrument may not be brought by:

(a) the maker, drawer, or acceptor of an instrument; or

(b) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or copayee.

(2) In an action under subsection (1), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(3) A representative, other than a depositary bank, that has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

**History: En. Sec. 3-419, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-419; amd. Sec. 144, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Draft not assignment, 30-3-409.
Definition and operation of acceptance, 30-3-410.
Warranties on presentment and transfer, 30-3-417.
Payment or satisfaction, 30-3-603

DEFINITIONAL

Acceptance, 30-3-410.
Action, 30-1-201.
Bank, 30-1-201.
Collecting bank, 30-3-102, 30-4-105.
Depositary bank, 30-3-102, 30-4-105.
Good faith, 30-1-201.
Instrument, 30-3-102.
Intermediary bank, 30-3-102, 30-4-105.
On demand, 30-3-108.
Person, 30-1-201.
Presumed, 30-1-201.
Representative, 30-1-201.

**30-3-420. Employer responsibility for fraudulent indorsement by employee.** (1) This section applies to fraudulent indorsements of instruments with respect to which an employer has entrusted an employee with responsibility as part of the employee's duties. The following definitions apply to this section:

(a) "Employee" includes, in addition to an employee of an employer, an independent contractor and employee of an independent contractor retained by the employer.

(b) "Fraudulent indorsement" means:

(i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(ii) in the case of an instrument with respect to which the employer is drawer or maker, a forged indorsement purporting to be that of the person identified as payee.

(c) (i) "Responsibility" with respect to instruments means authority to:

(A) sign or indorse instruments on behalf of the employer;

(B) process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition;

(C) prepare or process instruments for issue in the name of the employer;

(D) supply information determining the names or addresses of payees of instruments to be issued in the name of the employer;

(E) control the disposition of instruments to be issued in the name of the employer; or

(F) otherwise act with respect to instruments in a responsible capacity.

(ii) The term does not include the assignment of duties that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(2) For purposes of determining the rights and liabilities of a person who in good faith pays an instrument or takes it for value or for collection, if an employee entrusted with responsibility with respect to the instrument or a person acting in concert with the employee makes a fraudulent indorsement to the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(3) Under subsection (2), an indorsement is made in the name of the person to whom an instrument is payable if:

(a) it is made in a name substantially similar to the name of that person; or

(b) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

**History: En. Sec. 129, Ch. 410, L. 1991.**

**30-3-421. Refusal to pay cashier's checks, teller's checks, and certified checks.** (1) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(2) If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(3) Expenses or consequential damages under subsection (2) are not recoverable if the refusal of the obligated bank to pay occurs because:

(a) the bank suspends payments;

(b) the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(c) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(d) payment is prohibited by law.

**History: En. Sec. 135, Ch. 410, L. 1991.**

**30-3-422. Obligation of acceptor.** (1) An acceptor of a draft is obliged to pay the draft:

(a) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;

(b) if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or

(c) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser that paid the draft pursuant to 30-3-423 or 30-3-414.

(3) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. The obligation of the acceptor is the amount of the instrument at the time it was negotiated to the holder in due course if:

(a) the certification or acceptance does not state an amount;

(b) the instrument is subsequently altered by raising its amount; and

(c) the instrument is then negotiated to a holder in due course.

**History: En. Sec. 137, Ch. 410, L. 1991.**

**30-3-423. Obligation of drawer.** (1) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(a) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder; or

(b) if the drawer signed an incomplete instrument, according to its terms when completed as stated in 30-3-115 and 30-3-407.

(2) The obligation is owed to a person entitled to enforce the draft or to an indorser that paid the draft pursuant to 30-3-414.

(3) If a draft is accepted by a bank and the acceptor dishonors the draft, the drawer has no obligation to pay the draft because of the dishonor, regardless of when or by whom acceptance was obtained.

(4) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser stated in 30-3-414(1) and (3).

(5) Words in a draft indicating that the draft is drawn without recourse are effective to disclaim all liability of the drawer to pay the draft if the draft is not a check, but they are not effective to disclaim the obligation stated in subsection (1) if the draft is a check.

(6) The drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds if:

(a) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date;

(b) the drawee suspends payments after expiration of the 30-day period without paying the check; and

(c) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check.

**History: En. Sec. 138, Ch. 410, L. 1991.**

**30-3-424. Presentment warranties.** (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making the payment or accepting the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument and payment is received. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History: En. Sec. 142, Ch. 410, L. 1991.**

**30-3-425. Payment or acceptance by mistake.** (1) Except as provided in subsection (3), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped under 30-4-403, the signature of the purported drawer of the draft was authorized, or the balance in the drawer's account with the drawee represented available funds, the drawee may recover the amount paid for the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(2) Except as provided in subsection (3), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (1), the person paying or accepting may recover the amount paid or revoke acceptance to the extent allowed by the law governing mistake and restitution.

(3) The remedies provided by subsection (1) or (2) may not be asserted against a person who took the instrument in good faith and for value. This subsection does not limit remedies provided by 30-3-424 for breach of warranty.

**History: En. Sec. 143, Ch. 410, L. 1991.**

## Part 5
## Presentment, Notice of Dishonor, and Protest

**30-3-501. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-501.**

**30-3-502. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-502.**

**30-3-503. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-503.**

**30-3-504. Presentment.** (1) "Presentment" means a demand:

(a) to pay an instrument made to the maker, drawee, or acceptor or, in the case of a note of accepted draft payable at a bank, to the bank; or

(b) to accept a draft made to the drawee by a person entitled to enforce the instrument.

(2) Subject to chapter 4, agreement of the parties, clearing house rules and the like:

(a) presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; is effective if made to any one of two or more makers, acceptors, drawees, or other payors; and

(b) without dishonoring the instrument, the party to whom presentment is made may:

(i) treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour;

(ii) require exhibition of the instrument;

(iii) require reasonable identification of the person making presentment and evidence of authority to make it if made on behalf of another person;

(iv) require a signed receipt on the instrument for any payment made or surrender of the instrument if full payment is made;

(v) return the instrument for lack of a necessary indorsement; or

(vi) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other law or applicable rule.

**History: En. Sec. 3-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-504; amd. Sec. 145, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Acceptance varying draft, 30-3-412.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Draft, 30-3-104.
Holder, 30-1-201.
Instrument, 30-3-102.
Note, 30-3-104.
Party, 30-1-201.
Person, 30-1-201.

**30-3-505. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-505.**

**30-3-506. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-506.**

**30-3-507. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-507.**

**30-3-508. Notice of dishonor.** (1) The obligation of an indorser stated in 30-3-414(1) and the obligation of a drawer stated in 30-3-423(3) may not be enforced unless:

(a) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(b) notice of dishonor is excused under 30-3-513(3).

(2) Notice of dishonor may be given to any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.

(3) Subject to 30-3-513(4), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given by a bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument and by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

**History: En. Sec. 3-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-508; amd. Sec. 147, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Right of charge-back or refund, 30-4-212.

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Customer, 30-4-104.
Holder, 30-1-201.
Insolvency proceedings, 30-1-201.
Instrument, 30-3-102.
Issue, 30-3-102.
Midnight deadline, 30-4-104.
Notifies, 30-1-201.
Party, 30-1-201.
Person, 30-1-201.
Representative, 30-1-201.
Rights, 30-1-201.
Send, 30-1-201.
Written and writing, 30-1-201.

**30-3-509. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-509.**

**30-3-510. Evidence of dishonor.** (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) a document regular in form as provided in subsection (2) that purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(c) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business that shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

**History: En. Sec. 3-510, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-510; amd. Sec. 149, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Acceptance, 30-3-410.
Collecting bank, 30-4-105.
Instrument, 30-3-102.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presumption, 30-1-201.
Writing, 30-1-201.

**30-3-511. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-511, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-511.**

**30-3-512. Dishonor.** (1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is presented for payment otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under 30-4-301 or 30-4-302 or becomes accountable for the amount of the check under 30-4-302.

(b) If the draft is payable on demand and subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(c) If the draft is payable on a date stated in the draft, the draft is dishonored if:

(i) presentment for payment is duly made and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If the draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsections (2)(b) through (2)(d) except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under 30-3-513, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

**History: En. Sec. 146, Ch. 410, L. 1991.**

**30-3-513. Excused presentment and notice of dishonor.** (1) Presentment for payment or acceptance of an instrument is excused if:

(a) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(b) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(c) by the terms of the instrument, presentment is not necessary to enforce the obligation of indorsers or the drawer; or

(d) the drawer or indorser whose obligation is being enforced waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted.

(2) Presentment for payment or acceptance of a draft is also excused if the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(3) Notice of dishonor is excused if by the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(4) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

**History: En. Sec. 148, Ch. 410, L. 1991.**

## Part 6
## Discharge

**30-3-601. Discharge and effect of discharge.** (1) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party that would discharge an obligation to pay money under a simple contract.

(2) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

**History: En. Sec. 3-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-601; amd. Sec. 150, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Rights of holder in due course, 30-3-305.
Rights of one not holder in due course, 30-3-306.
Burden of establishing signatures, defenses, and due course, 30-3-307.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Contract of accommodation party, 30-3-415.

DEFINITIONAL

Action, 30-1-201.
Agreement, 30-1-201.
Alteration, 30-3-407.
Check, 30-3-104.
Contract, 30-1-201.
Draft, 30-3-104.
Instrument, 30-3-102.
Money, 30-1-201.
Notice of dishonor, 30-3-508.
Party, 30-1-201.
Presentment, 30-3-504.
Rights, 30-1-201.

**30-3-602. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 3-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-602.**

**30-3-603. Payment.** (1) Subject to subsection (2), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under 30-3-306 by another person.

(2) The obligation of a party to pay the instrument is not discharged under subsection (1) if:

(a) a claim to the instrument under 30-3-306 is enforceable against the party receiving payment and:

(i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(b) the person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument.

**History: En. Sec. 3-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-603; amd. Sec. 151, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Restrictive indorsements, 30-3-205.
Reacquisition, 30-3-208.
Rights of holder, 30-3-301.
Rights of one not holder in due course, 30-3-306.
Contract of accommodation party, 30-3-415.
Discharge of parties, 30-3-601.
Tender of payment, 30-3-604.

DEFINITIONAL

Action, 30-1-201.
Holder, 30-1-201.
Instrument, 30-3-102.
Order, 30-3-102.
Party, 30-1-201.
Person, 30-1-201.
Rights, 30-1-201.

**30-3-604. Tender of payment.** (1) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(2) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(3) If tender of payment of an amount due on an instrument is made by or on behalf of the obligor to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required

with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is considered to have made tender of payment on the due date to the person entitled to enforce the instrument.

**History:** **En. Sec. 3-604, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-604; amd. Sec. 152, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

How presentment made, 30-3-504.
Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
On demand, 30-3-108.
Party, 30-1-201.
Right, 30-1-201.

**30-3-605. Discharge by cancellation or renunciation.** (1) A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of a party to pay the instrument:

(a) by an intentional voluntary act, such as surrender of the instrument to the party; destruction, mutilation, or cancellation of the instrument; cancellation or striking out of the party's signature; or the addition of words to the instrument indicating discharge; or

(b) by agreeing not to sue or otherwise renouncing rights against the party by a signed record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

(2) Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the indorsement.

**History:** **En. Sec. 3-605, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-605; amd. Sec. 153, Ch. 410, L. 1991; amd. Sec. 25, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 25, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Discharge of parties, 30-3-601.

DEFINITIONAL

Holder, 30-1-201.
Instrument, 30-3-102.
Party, 30-1-201.
Rights, 30-1-201.
Signature, 30-3-401.
Signed, 30-1-201.
Writing, 30-1-201.

**30-3-606. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History:** **En. Sec. 3-606, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-606.**

**30-3-607. Discharge of indorsers and accommodation parties.** (1) For the purposes of this section, the term "indorser" includes a drawer having the obligation stated in 30-3-423(3).

(2) Discharge of the obligation of a party to the instrument under 30-3-605 does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(3) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party to the instrument, including an extension of the due date, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The indorser or accommodation party is considered to have suffered loss as a result of the modification equal to the amount of the right of recourse unless the person enforcing the

instrument proves that no loss was caused by the modification or that the loss caused by the modification was less than the amount of the right of recourse.

(4) If the obligation of a party to an instrument is secured by an interest in collateral and impairment of the value of the interest is caused by a person entitled to enforce the instrument, there is discharge of the obligation of an indorser or accommodation party having a right of recourse against the obligor to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge or the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(5) If the obligation of a party to an instrument is secured by an interest in collateral not provided by an accommodation party and the value of the interest is impaired by a person entitled to enforce the instrument, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (4), the party is considered to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(6) Under subsection (4) or (5), causation of impairment includes:

(a) failure to obtain or maintain perfection or recordation of the interest in collateral;

(b) release of collateral without substitution of collateral of equal value;

(c) failure to perform a duty to preserve the value of collateral owed, under chapter 9A or other law, to a debtor or surety or other person secondarily liable; or

(d) failure to comply with applicable law in disposing of collateral.

(7) An accommodation party is not discharged under subsection (3) or (4) unless the person agreeing to the modification or causing the impairment knows of the accommodation or has notice under 30-3-415(3) that the instrument was signed for accommodation. There is no discharge of any party under subsection (3), (4), or (5) if:

(a) the party asserting discharge consents to the event or conduct that is the basis of the discharge; or

(b) the instrument or a separate agreement of the party provides for waiver of discharge under this section, either specifically or by general language, indicating that parties to the instrument waive defenses based on suretyship or impairment of collateral.

**History: En. Sec. 154, Ch. 410, L. 1991.**

## Part 7
## Advice of International Sight Draft
## (Repealed)

**30-3-701. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-701, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-701.**

## Part 8
## Miscellaneous
## (Repealed)

**30-3-801. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-801, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-801.**

**30-3-802. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-802, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-802.**

**30-3-803. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-803, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-803.**

**30-3-804. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-804, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-804.**

**30-3-805. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 3-805, Ch. 264, L. 1963; R.C.M. 1947, 87A-3-805.**

# CHAPTER 4
# UNIFORM COMMERCIAL CODE
# BANK DEPOSITS AND COLLECTIONS

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**Chapter Cross-References**

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

## Part 1
## General Provisions and Definitions

**Part Cross-References**

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

**30-4-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections.

**History: En. Sec. 4-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-101.**

**30-4-102. Applicability.** (1) To the extent that items within this chapter are also within the scope of chapters 3, 5, and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of chapter 3 but the provisions of chapters 5 and 8 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

**History: En. Sec. 4-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-102; amd. Sec. 155, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Territorial application of Code — parties power to choose applicable law, 30-1-301.
Bank deposits and collections, Title 30, ch. 4.
Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.
Secured transactions, Title 30, ch. 9A.

DEFINITIONAL

Bank, 30-1-201.
Branch, 30-1-201.
Item, 30-4-104.

**30-4-103. Variation by agreement — measure of damages — action constituting ordinary care.** (1) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating circulars, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating circulars constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse and similar rules or with a general banking usage not disapproved by this chapter, constitutes prima facie the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures that may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

**History: En. Sec. 4-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-103; amd. Sec. 156, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Purposes — rules of construction — variation by agreement, 30-1-102.
Obligation of good faith, 30-1-203.
Course of dealing and usage of trade, 30-1-205.
Responsibility for collection — when action seasonable, 30-4-202.

DEFINITIONAL

Bank, 30-1-201.
Good faith, 30-1-201.
Item, 30-4-104.
Usage, 30-1-205.

**30-4-104. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires:

(a) "account" means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "afternoon" means the period of a day between noon and midnight;

(c) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "clearinghouse" means an association of banks or other payors regularly clearing items;

(e) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank;

(f) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (30-8-112) or instructions for uncertificated securities (30-8-112), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order;

(h) "item" means an instrument or a promise or an order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip.

(i) "midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(j) "settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(k) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Bank". 30-4-105.
"Collecting bank". 30-4-105.
"Depositary bank". 30-4-105.
"Intermediary bank". 30-4-105.
"Payor bank". 30-4-105.
"Presenting bank". 30-4-105.
"Presentment notice". 30-4-111.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.
"Alteration". 30-3-407.
"Cashier's check". 30-3-104.
"Certificate of deposit". 30-3-104.
"Certified check". 30-3-410.
"Check". 30-3-104.
"Control". 30-7-107.
"Drawee". 30-3-102.
"Good faith". 30-3-102.
"Holder in due course". 30-3-302.
"Instrument". 30-3-104.
"Notice of dishonor". 30-3-508.
"Order". 30-3-102.
"Ordinary care". 30-3-102.
"Person entitled to enforce". 30-3-301.
"Presentment". 30-3-504.
"Promise". 30-3-102.
"Prove". 30-3-102.

"Teller's check". 30-3-104.
"Unauthorized signature". 30-3-404.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History: En. Sec. 4-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-104; amd. Sec. 157, Ch. 410, L. 1991; amd. Sec. 5, Ch. 536, L. 1997; amd. Sec. 31, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Bank, 30-1-201.
Documents, 30-1-201.
Money, 30-1-201.
Negotiable, 30-3-104.
Notice, 30-1-201.
Person, 30-1-201.

**30-4-105. "Bank" — "depositary bank" — "intermediary bank" — "collecting bank" — "payor bank" — "presenting bank".** In this chapter, unless the context otherwise requires:

(1) "bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "payor bank" means a bank that is the drawee of a draft;

(4) "intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) "collecting bank" means a bank handling an item for collection except the payor bank;

(6) "presenting bank" means a bank presenting an item except a payor bank.

**History: En. Sec. 4-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-105; amd. Sec. 158, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Negotiable instruments, Title 30, ch. 3.

DEFINITIONAL

Bank, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.

**30-4-106. Separate office of a bank.** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this chapter and under chapter 3.

**History: En. Sec. 4-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-106; amd. Sec. 160, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

How presentment made, 30-3-504.
Applicability (bank deposits and collections), 30-4-102.

DEFINITIONAL

Bank, 30-1-201.
Branch, 30-1-201.

**30-4-107. Time of receipt of items.** (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

**History: En. Sec. 4-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-107.**

**Cross-References**

DEFINITIONAL

Afternoon, 30-4-104.
Bank, 30-1-201.
Banking day, 30-4-104.
Item, 30-4-104.
Money, 30-1-201.

**30-4-108. Delays.** (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank and with or without the approval of any person involved may waive, modify, or extend time limits imposed or permitted by this code for a period not exceeding 2 additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code or by instructions is excused if:

(a) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank; and

(b) the bank exercises such diligence as the circumstances require.

**History: En. Sec. 4-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-108; amd. Sec. 161, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Applicability (bank deposits and collections), 30-4-102.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Responsibility for collection — when action seasonable, 30-4-202.
Right of charge-back or refund, 30-4-212.
Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.
Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Good faith, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.

**30-4-109. Repealed.** Sec. 230, Ch. 410, L. 1991.

**History: En. Sec. 4-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-109.**

**30-4-110. Payable through or payable at bank — collecting bank.** (1) If an item states that it is "payable through" a bank identified in the item:

(a) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(b) the item may be presented for payment only by or through the bank.

(2) If an item states that it is "payable at" a bank identified in the item, the item is drawn on the bank.

**History: En. Sec. 159, Ch. 410, L. 1991.**

**30-4-111. Truncation.** (1) "Truncation agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the truncation agreement.

(2) If presentment is made pursuant to a truncation agreement, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

(3) An intermediary bank handling a presentment notice pursuant to a truncation agreement has the rights of a holder of the item to the same extent it would have had rights in the item if the item had been physically transferred to it in the course of collection.

**History: En. Sec. 162, Ch. 410, L. 1991.**

**30-4-112. Statute of limitations.** An action to enforce an obligation, duty, or right arising under this chapter must be commenced within 3 years after the cause of action accrues.

**History: En. Sec. 163, Ch. 410, L. 1991.**

## Part 2
## Collection of Items
## Depositary and Collecting Banks

**30-4-201. Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank".** (1) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213), the bank with respect to the item is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder:

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

**History: En. Sec. 4-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-201; amd. Sec. 164, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Reacquisition, 30-3-208.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Transfer of items between banks, 30-4-206.
Insolvency and preference, 30-4-214.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Holder, 30-1-201.
Indorsements, 30-3-202, 30-3-204, 30-3-205.
Item, 30-4-104.
Person, 30-1-201.
Settle, 30-4-104.

**30-4-202. Responsibility for collection or return — when action timely.** (1) A collecting bank must exercise ordinary care in:

(a) presenting an item or sending it for presentment;

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(c) settling for an item when the bank receives final settlement; and

(d) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank exercises ordinary care under subsection (1) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

**History: En. Sec. 4-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-202; amd. Sec. 165, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Time of receipt of items, 30-4-107.
Delays, 30-4-108.
Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.
Payor bank's responsibility for late return of item, 30-4-302.

DEFINITIONAL

Collecting bank, 30-4-105.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Presentment, Title 30, ch. 3, part 5.

**30-4-203. Effect of instructions.** Subject to the provisions of chapter 3 concerning conversion of instruments (30-3-419) and restrictive endorsements (30-3-205), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

**History: En. Sec. 4-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-203; amd. Sec. 166, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Restrictive indorsements, 30-3-205.
Payment or satisfaction, 30-3-603.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Supplying missing endorsement — no notice from prior endorsement, 30-4-205.

DEFINITIONAL

Collecting bank, 30-4-105.
Restrictive indorsements, 30-3-205.

**30-4-204. Methods of sending and presenting — sending directly to payor bank.** (1) A collecting bank shall send items by a reasonably prompt method, taking into consideration any relevant instructions, the nature of the item, the number of those items on hand, and the cost of collection involved and the method generally used by it or others to present those items.

(2) A collecting bank may send:

(a) an item directly to the payor bank;

(b) an item to any nonbank payor if authorized by its transferor; and

(c) an item other than documentary drafts to a nonbank payor, if authorized by federal reserve regulation or operating circular, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

**History: En. Sec. 4-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-204; amd. Sec. 167, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

How presentment made, 30-3-504.
Presentment by notice of item not payable by, through, or at bank — liability of secondary parties, 30-4-210.
Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.
Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Collecting bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.

**30-4-205. Depositary bank holder of unindorsed item.** If a customer is a holder of an item that is delivered to a depositary bank for collection:

(1) the depositary bank becomes a holder of the item at the time it receives the item for collection, whether or not the customer indorses, and if it satisfies the other requirements of 30-3-302, it may be a holder in due course; and

(2) the depositary bank warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

**History: En. Sec. 4-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-205; amd. Sec. 168, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Restrictive indorsements, 30-3-205.
Conversion of instrument — innocent representative, 30-3-419.
Payment or satisfaction, 30-3-603.
Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.
Restrictive indorsements, 30-3-205.

**30-4-206. Transfer between banks.** Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

**History: En. Sec. 4-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-206; amd. Sec. 169, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Negotiation, 30-3-202.

DEFINITIONAL

Bank, 30-1-201.
Item, 30-4-104.

**30-4-207. Transfer warranties.** (1) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(a) the warrantor is a person entitled to enforce the item;

(b) all signatures on the item are authentic and authorized;

(c) the item has not been altered;

(d) the item is not subject to a defense or claim in recoupment stated in 30-3-305(1) of any party to the item that can be asserted against the warrantor; and

(e) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(2) If an item is dishonored, a customer and collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed as stated in 30-3-115 and 30-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(3) A person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(4) The warranties stated in subsection (1) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(5) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History:** **En. Sec. 4-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-207; amd. Sec. 170, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Contract of endorser — order of liability, 30-3-414.
Warranties on presentment and transfer, 30-3-417.
Transfer between banks, 30-4-206.
Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.
When bank gives value for purposes of holder in due course, 30-4-209.
Payor bank's responsibility for late return of item, 30-4-302.
Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.

DEFINITIONAL

Collecting bank, 30-4-105.
Customer, 30-4-104.
Draft, 30-3-104.
Genuine, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Holder in due course, 30-3-302.
Insolvency proceedings, 30-1-201.
Item, 30-4-104.
Party, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Presentment, 30-3-504.
Unauthorized signature, 30-1-201.

**30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds.** (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 9A except that:

(a) no security agreement is necessary to make the security interest enforceable (30-9A-203(2)(c)(i)); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

**History:** **En. Sec. 4-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-208; amd. Sec. 7, Ch. 402, L. 1983; amd. Sec. 173, Ch. 410, L. 1991; amd. Sec. 141, Ch. 305, L. 1999.**

**Cross-References**

GENERAL

Holder in due course, 30-3-302.
Taking for value, 30-3-303.
Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.
When bank gives value for purposes of holder in due course, 30-4-209.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Bank, 30-1-201.
Item, 30-4-104.
Security interest, 30-1-201.
Settlement, 30-4-104.

**30-4-209. When bank gives value for purposes of holder in due course.** For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, provided the bank otherwise complies with the requirements of 30-3-302 on what constitutes a holder in due course.

**History: En. Sec. 4-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-209; amd. Sec. 174, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Taking for value, 30-3-303.
Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.

DEFINITIONAL

Bank, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Security interest, 30-1-201.

**30-4-210. Presentment by notice of item not payable by, through, or at a bank — liability of secondary parties.** (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under 30-3-504 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and neither payment, acceptance, nor request for compliance with a requirement under 30-3-504 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending it notice of the facts.

**History: En. Sec. 4-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-210; amd. Sec. 175, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

How presentment made, 30-3-504.
Notice of dishonor, 30-3-508.
Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.
Presentment of "on arrival" drafts, 30-4-502.

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Party, 30-1-201.
Presentment, 30-3-504.
Secondary party, 30-3-102.
Send, 30-1-201.

**30-4-211. Medium and time of settlement by bank.** (1) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like or by agreement. In the absence of such prescription:

(a) the medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

(b) the time of settlement is:

(i) with respect to tender of settlement by cash, a cashier's check, or a teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to 30-4A-406(1) to the person receiving settlement.

(2) If the tender of settlement is not by a medium authorized by subsection (1) or the time of settlement is not fixed by subsection (1), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(3) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(a) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(b) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(4) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

**History: En. Sec. 4-211, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-211; amd. Sec. 176, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal, 30-4-213.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Money, 30-1-201.
Payor bank, 30-4-105.
Person, 30-1-201.
Remitting bank, 30-4-105.
Settle, 30-4-104.

**30-4-212. Right of charge-back or refund — liability of collecting bank — return of item.** (1) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer, whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer but is liable for any loss resulting from the delay. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsections (3) and (4) of 30-4-211 and subsections (2) and (3) of 30-4-213).

(2) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(3) A depositary bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (30-4-301).

(4) The right to charge back is not affected by:

(a) previous use of a credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

**History: En. Sec. 4-212, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-212; amd. Sec. 177, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Obligation of good faith, 30-1-203.
Money, 30-3-107.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Bank's liability to customer for wrongful dishonor, 30-4-402.

DEFINITIONAL

Account, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Intermediary bank, 30-4-105.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.
Suspension of payment, 30-4-104.

**30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.** (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsections (3) and (4) of 30-4-211 and subsection (2) of this section) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) if the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(b) if the bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

**History: En. Sec. 4-213, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-213; amd. Sec. 178, Ch. 410, L. 1991; amd. Sec. 134, Ch. 42, L. 1997.**

**Cross-References**

GENERAL

Time of receipt of items, 30-4-107.
Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.
Deferred posting — recovery of payment by return of items — time of dishonor, 30-4-301.
Payor bank's responsibility for late return of item, 30-4-302.
When items subject to notice, stop order, legal process, or setoff — order in which items may be charged or certified, 30-4-303.
Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Agreement, 30-1-201.
Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Money, 30-1-201.
Notice, 30-1-201.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Settlement, 30-4-104.

**30-4-214. Insolvency and preference.** (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsections (3) and (4) of 30-4-211 and subsections (1)(c), (2), and (3) of 30-4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer that is or becomes final, the owner of the item has a preferred claim against the collecting bank.

**History: En. Sec. 4-214, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-214; amd. Sec. 179, Ch. 410, L. 1991.**

**Cross-References**

Severability, 30-1-108.
Deposits in insolvent banks, 32-1-504.
Order of payment when bank liquidated, 32-1-534.

**30-4-215. Presentment warranties.** (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) the warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) the draft has not been altered; and

(c) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the

drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) breach of warranty is a defense to the obligation of the acceptor; and

(b) the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection (2) if the acceptor makes payment with respect to the draft.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under 30-3-405 or 30-3-420 or the drawer is precluded under 30-3-406 or 30-4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(4) This subsection applies if a dishonored draft is presented for payment to the drawer or an indorser or any other item is presented for payment to a party obliged to pay the item and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

**History: En. Sec. 171, Ch. 410, L. 1991.**

**30-4-216. Encoding and retention warranties.** (1) A person that encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(2) A person that undertakes to retain an item pursuant to a truncation agreement warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the truncation agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(3) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach plus expenses and loss of interest incurred as a result of the breach.

**History: En. Sec. 172, Ch. 410, L. 1991.**

## Part 3
## Collection of Items — Payor Banks

**30-4-301. Deferred posting — recovery of payment by return of items — time of dishonor — return of items by payor bank.** (1) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any settlement if before it has paid the item in cash (subsection (1)(a) of 30-4-213) and before its midnight deadline it:

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

**History: En. Sec. 4-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-301; amd. Sec. 180, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Notice of dishonor, 30-3-508.

DEFINITIONAL

Banking day, 30-4-104.
Clearinghouse, 30-4-104.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Presenting bank, 30-4-105.
Send, 30-1-201.
Settlement, 30-4-104.

**30-4-302. Payor bank's responsibility for late return of item.** (1) If an item is presented to and received by a payor bank the bank is accountable for the amount of:

(a) a demand item, other than a documentary draft, whether properly payable or not if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depositary bank, does not settle for or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

(2) The liability of a payor bank to pay an item pursuant to subsection (1) is subject to defenses based on breach of a presentment warranty (30-4-215) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

**History: En. Sec. 4-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-302; amd. Sec. 75, Ch. 370, L. 1987; amd. Sec. 181, Ch. 410, L. 1991.**

**Cross-References**

DEFINITIONAL

Acceptance, 30-3-410.
Banking day, 30-4-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Documentary draft, 30-4-104.
Item, 30-4-104.
Midnight deadline, 30-4-104.
Notice of dishonor, 30-3-508.
Payor bank, 30-4-105.
Properly payable, 30-4-104.
Settle, 30-4-104.

**30-4-303. When items subject to notice, stop order, legal process or setoff — order in which items may be charged or certified.** (1) Any knowledge, notice, or stop order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(a) the bank accepts or certifies the item;

(b) the bank pays the item in cash;

(c) the bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement;

(d) the bank becomes accountable for the amount of the item under 30-4-302 dealing with the payor bank's responsibility for late return of items; or

(e) with respect to checks, a cutoff hour no earlier than 1 hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

**History: En. Sec. 4-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-303; amd. Sec. 182, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Definition and operation of acceptance, 30-3-410.
Customer's right to stop payment — burden of proof of loss, 30-4-403.
Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Acceptance, 30-3-410.
Account, 30-4-104.
Agreement, 30-1-201.
Clearinghouse, 30-4-104.
Customer, 30-4-104.
Item, 30-4-104.
Notice, 30-1-201.
Payor bank, 30-4-105.
Settle, 30-4-104.

## Part 4
## Relationship Between Payor Bank and Its Customer

**Part Cross-References**

Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

**30-4-401. When bank may charge customer's account.** (1) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.

(2) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(3) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in 30-4-403(2) for stop orders and must be received at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the check described in 30-4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items pursuant to 30-4-402.

(4) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(a) the original terms of the altered item; or

(b) the terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

**History: En. Sec. 4-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-401; amd. Sec. 183, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Incomplete instruments, 30-3-115.
Alteration, 30-3-407.
Customer's duty to discover and report unauthorized signature or alteration, 30-4-406.
Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Customer, 30-4-104.
Good faith, 30-1-201.
Holder, 30-1-201.
Item, 30-4-104.
Properly payable, 30-4-104.

**30-4-402. Bank's liability to customer for wrongful dishonor — time of determining insufficiency of account.** (1) Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(2) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(3) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one such determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

**History: En. Sec. 4-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-402; amd. Sec. 184, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Breach of obligation to pay money, 27-1-312.
Liability for negligence as well as willful acts, 27-1-701.
Mistakes of fact or law, 28-2-408 through 28-2-410.

DEFINITIONAL

Bank, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.

**30-4-403. Customer's right to stop payment — burden of proof of loss.** (1) Subject to 27-1-717, a customer or any person authorized to draw on the account if there is more than one may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty and received by the bank at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in 30-4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop order is effective for 6 months after the time it is received, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop order may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a binding stop payment order may include damages for dishonor of subsequent items pursuant to 30-4-402.

**History: En. Sec. 4-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-403; amd. Sec. 2, Ch. 557, L. 1985; amd. Sec. 185, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Rights of holder in due course, 30-3-305.
Contract of maker, drawer, and acceptor, 30-3-413.
Payment or satisfaction, 30-3-603.
Variation by agreement — measure of damages — certain action constituting ordinary care, 30-4-103.
Death or incompetence of customer, 30-4-405.
Payor bank's right to subrogation on improper payment, 30-4-407.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Burden of establishing, 30-1-201.
Customer, 30-4-104.
Item, 30-4-104.
Send, 30-1-201.

**30-4-404. Bank not obligated to pay check more than 6 months old.** A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

**History: En. Sec. 4-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-404.**

**Cross-References**

GENERAL

Contract of maker, drawer, and acceptor, 30-3-413.
Financial institution's responsibility to provide notice when funds become available for withdrawal, 32-1-440.

DEFINITIONAL

Account, 30-4-104.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Good faith, 30-1-201.
Presentment, 30-3-504.

**30-4-405. Death or incompetence of customer.** (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

**History: En. Sec. 4-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-405.**

**Cross-References**

DEFINITIONAL

Acceptance, 30-3-410.
Bank, 30-1-201.
Check, 30-3-104.
Customer, 30-4-104.
Depositary bank, 30-4-105.
Item, 30-4-104.
Payor bank, 30-4-105.

**30-4-406. Customer's duty to discover and report unauthorized signature or alteration.** (1) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may

request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer shall exercise reasonable promptness in examining the statement or the item to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer has a duty to give prompt notification to the bank of the relevant facts.

(4) If the bank proves that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (3) the customer is precluded from asserting against the bank:

(a) the customer's unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notification from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time in which to examine the item or statement of account and notify the bank. "Reasonable period of time" is presumed to be 14 calendar days after the item or statement pursuant to subsection (1) was received by or made available to the customer.

(5) If subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.

(6) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement or items are made available to the customer (subsection (1)) discover and report the customer's unauthorized signature or any alteration is precluded from asserting against the bank such unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under 30-4-215 with respect to the unauthorized signature or alteration to which the preclusion applies.

**History:** En. Sec. 4-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-406; amd. Sec. 186, Ch. 410, L. 1991.

**Cross-References**

GENERAL

Unauthorized signatures, 30-3-404.
Impostors — signature in name of payee, 30-3-405.
Negligence contributing to alteration or unauthorized signature, 30-3-406.
Alteration, 30-3-407.
Warranties on presentment and transfer, 30-3-417.
Warranties of customer and collecting bank on transfer or presentment of items — time for claims, 30-4-207.

DEFINITIONAL

Alteration, 30-3-407.
Bank, 30-1-201.
Collecting bank, 30-4-105.
Customer, 30-4-104.
Endorsement, 30-3-204.
Good faith, 30-1-201.
Item, 30-4-104.
Payor bank, 30-4-105.
Send, 30-1-201.
Unauthorized signature, 30-1-201.

**30-4-407. Payor bank's right to subrogation on improper payment.** If a payor bank has paid an item over the stop payment order of the drawer or maker, after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) of any holder in due course on the item against the drawer or maker; and

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

**History: En. Sec. 4-407, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-407; amd. Sec. 187, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

Customer's right to stop payment — burden of proof of loss, 30-4-403.

DEFINITIONAL

Holder, 30-1-201.
Holder in due course, 30-3-302.
Item, 30-4-104.
Payor bank, 30-4-105.

## Part 5
## Collection of Documentary Drafts

**30-4-501. Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor.** A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

**History: En. Sec. 4-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-501.**

**Cross-References**

GENERAL

Presumption and duration of agency status of collecting banks and provisional status of credits — applicability of chapter — item endorsed "pay any bank", 30-4-201.
Responsibility for collection — when action seasonable, 30-4-202.
Effect of instructions, 30-4-203.
Methods of sending and presenting — sending direct to payor bank, 30-4-204.
Presentment by notice of item not payable by, through, or at bank — liability of secondary parties, 30-4-210.

**30-4-502. Presentment of "on arrival" drafts.** When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

**History: En. Sec. 4-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-502.**

**Cross-References**

GENERAL

Responsibility for collection — when action seasonable, 30-4-202.
Effect of instructions, 30-4-203.

DEFINITIONAL

Collecting bank, 30-4-105.

**30-4-503. Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need.** (1) Unless otherwise instructed and except as provided in chapter 5, a bank presenting a documentary draft:

(a) shall deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the referee's services, it shall use diligence and good faith to ascertain the reason for dishonor, shall notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and shall request instructions.

(2) The presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

**History:** **En. Sec. 4-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-503; amd. Sec. 188, Ch. 410, L. 1991.**

**Cross-References**

GENERAL

When documents deliverable on acceptance — when on payment, 30-2-514.
Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.

DEFINITIONAL

Documentary draft, 30-4-104.
Presenting bank, 30-4-105.

**30-4-504. Privilege of presenting bank to deal with goods — security interest for expenses.** (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

**History:** **En. Sec. 4-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-4-504.**

**Cross-References**

GENERAL

Seller's resale including contract for resale, 30-2-706.

DEFINITIONAL

Documentary draft, 30-4-104.
Presenting bank, 30-4-105.

# CHAPTER 4A
# UNIFORM COMMERCIAL CODE
# FUNDS TRANSFERS

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# Part 1
## Subject Matter and Definitions

**Part Cross-References**

Payment of taxes by electronic funds transfer, Title 15, ch. 1, part 8.
Credit Transactions and Relationships, Title 31.
Montana Electronic Funds Transfer Act, Title 32, ch. 6.

**30-4A-101. Short title.** This chapter may be cited as Uniform Commercial Code—Funds Transfers.

**History: En. Sec. 189, Ch. 410, L. 1991.**

**30-4A-102. Subject matter.** Except as otherwise provided in 30-4A-108, this chapter applies to funds transfers defined in 30-4A-104.

**History: En. Sec. 190, Ch. 410, L. 1991.**

**Cross-References**

Banks and trust companies, title 32, ch 1.
National bank powers extended to state banks, 32-1-362.
Credit unions, Title 32, ch. 3.
Electronic funds transfer systems — applicability 32-6-102.

**30-4A-103. Payment order — definitions.** (1) In this chapter, the following definitions apply:

(a) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) "Beneficiary" means the person to be paid by the beneficiary's bank.

(c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) "Receiving bank" means the bank to which the sender's instruction is addressed.

(e) "Sender" means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

**History: En. Sec. 191, Ch. 410, L. 1991; amd. Sec. 26, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 26, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-104. Funds transfer — definitions.** In this chapter, the following definitions apply:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means:

(a) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(b) the originator if the originator is a bank.

**History: En. Sec. 192, Ch. 410, L. 1991.**

**Cross-References**

Electronic funds transfer — definitions, 32-6-103.

**30-4A-105. Other definitions.** (1) In this chapter, the following definitions apply:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (30-1-201(2)(h)).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance". 30-4A-209.
"Beneficiary". 30-4A-103.
"Beneficiary's bank". 30-4A-103.
"Executed". 30-4A-301.
"Execution date". 30-4A-301.
"Funds transfer". 30-4A-104.
"Funds-transfer system rule". 30-4A-501.
"Intermediary bank". 30-4A-104.
"Originator". 30-4A-104.
"Originator's bank". 30-4A-104.
"Payment by beneficiary's bank to beneficiary". 30-4A-405.
"Payment by originator to beneficiary". 30-4A-406.
"Payment by sender to receiving bank". 30-4A-403.
"Payment date". 30-4A-401.
"Payment order". 30-4A-103.
"Receiving bank". 30-4A-103.

"Security procedure". 30-4A-201.
"Sender". 30-4A-103.

(3) The following definitions in chapter 4 apply to this chapter:
"Clearinghouse". 30-4-104.
"Item". 30-4-104.
"Suspends payments". 30-4-104.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History:** **En. Sec. 193, Ch. 410, L. 1991; amd. Sec. 32, Ch. 575, L. 2005; amd. Sec. 27, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 27, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-106. Time payment order is received.** (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in 30-1-210. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

**History:** **En. Sec. 194, Ch. 410, L. 1991; amd. Sec. 33, Ch. 575, L. 2005.**

**30-4A-107. Federal reserve regulations and operating circulars.** Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

**History:** **En. Sec. 195, Ch. 410, L. 1991.**

**Cross-References**

National bank powers extended to state banks, 32-1-362.

**30-4A-108. Relationship to Electronic Fund Transfer Act.** (1) Except as provided in subsection (2), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978, Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.

(2) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693a.

(3) In a funds transfer to which this chapter applies, in the event of an inconsistency between an applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

**History:** **En. Sec. 196, Ch. 410, L. 1991; amd. Sec. 1, Ch. 71, L. 2013.**

**Cross-References**

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.
Montana Electronic Funds Transfer Act, Title 32, ch. 6.

## Part 2
## Issue and Acceptance of Payment Order

**Part Cross-References**

Banks and trust companies — operation and regulation, Title 32, ch. 1, part 4.

**30-4A-201. Security procedure.** "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words, numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known e-mail address, IP address, or telephone number is not by itself a security procedure.

**History:** **En. Sec. 197, Ch. 410, L. 1991; amd. Sec. 28, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 28, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.
Protection of privacy, 32-6-105.
Unauthorized disclosure of electronic funds transfer records, 32-6-106.
Personal identification number — restrictions, 32-6-306.

**30-4A-202. Authorized and verified payment orders.** (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders and the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:

(a) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer; and

(b) the customer expressly agreed in a record to be bound by any payment order, whether or not authorized, issued in the customer's name and accepted by the bank in compliance with the bank's obligation under the security procedure chosen by the customer.

(4) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1) or if it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in 30-4A-203(1)(a), rights and obligations arising under this section or 30-4A-203 may not be varied by agreement.

**History:** **En. Sec. 198, Ch. 410, L. 1991; amd. Sec. 29, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 29, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Financial institution's responsibility to provide notice when funds become available for withdrawal 32-1-440.

**30-4A-203. Unenforceability of certain verified payment orders.** (1) If an accepted payment order is not, under 30-4A-202(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to 30-4A-202(2), the following rules apply:

(a) By express agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) (i) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

(ii) Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

**History: En. Sec. 199, Ch. 410, L. 1991; amd. Sec. 30, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 30, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Unauthorized transactions — liability, 32-6-303.

**30-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.** (1) If a receiving bank accepts a payment order issued in the name of its customer as sender that is not authorized and not effective as the order of the customer under 30-4A-202 or not enforceable, in whole or in part, against the customer under 30-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in 30-1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

**History: En. Sec. 200, Ch. 410, L. 1991.**

**Cross-References**

Unauthorized transactions — liability, 32-6-303.

**30-4A-205. Erroneous payment orders.** (1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order erroneously instructed payment to a beneficiary not intended by the sender, erroneously instructed payment in an amount greater than the amount intended by the sender, or was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to 30-4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subsections (1)(b) and (1)(c).

(b) Except as provided in subsection (1)(c), if the funds transfer is completed on the basis of an erroneous payment order described in subsection (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order erroneously instructing payment in an amount greater than the amount intended by the sender, as described in subsection (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order and the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

**History:** **En. Sec. 201, Ch. 410, L. 1991.**

**Cross-References**

Unauthorized transactions — liability, 32-6-303.

**30-4A-206. Transmission of payment order through funds-transfer or other communication system.** (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is considered to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

**History:** **En. Sec. 202, Ch. 410, L. 1991.**

**Cross-References**

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

**30-4A-207. Misdescription of beneficiary.** (1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If a payment order described in subsection (2) is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a record stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

**History: En. Sec. 203, Ch. 410, L. 1991; amd. Sec. 31, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 31, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-208. Misdescription of intermediary bank or beneficiary's bank.** (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number as follows:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank, both by name and an identifying number, if the name and number identify different persons as follows:

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a record stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in 30-4A-302(1)(a).

**History: En. Sec. 204, Ch. 410, L. 1991; amd. Sec. 32, Ch. 200, L. 2025.**

**Compiler's Comments**
*2025 Amendment:* See 2025 Session Law for amendment made by sec. 32, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-209. Acceptance of payment order.** (1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the bank:

(i) pays the beneficiary as stated in 30-4A-405(1) or (2); or

(ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) when the bank receives payment of the entire amount of the sender's order pursuant to 30-4A-403(1)(a) or (1)(b); or

(c) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or if the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within 1 hour after that time or 1 hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (2)(b) or (2)(c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or until the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to 30-4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

**History:** **En. Sec. 205, Ch. 410, L. 1991.**

**30-4A-210. Rejection of payment order.** (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally or in a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(a) any means complying with the agreement is reasonable; and

(b) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of

the day the order is canceled pursuant to 30-4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are considered rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

**History: En. Sec. 206, Ch. 410, L. 1991; amd. Sec. 33, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 33, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-211. Cancellation and amendment of payment order.** (1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally or in a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank as follows:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) (i) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer that resulted in the issuance of a payment order:

(A) that is a duplicate of a payment order previously issued by the sender;

(B) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(C) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator.

(ii) If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is considered to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

**History: En. Sec. 207, Ch. 410, L. 1991; amd. Sec. 34, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 34, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-4A-212. Liability and duty of receiving bank regarding unaccepted payment order.** If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action or refrain from taking action with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in 30-4A-209, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

**History: En. Sec. 208, Ch. 410, L. 1991.**

## Part 3
## Execution of Sender's Payment Order by Receiving Bank

**Part Cross-References**

Uniform Commercial Code — negotiable instruments, Title 30, ch. 3.

**30-4A-301. Execution and execution date.** (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank may be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

**History: En. Sec. 209, Ch. 410, L. 1991.**

**30-4A-302. Obligations of receiving bank in execution of payment order.** (1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to 30-4A-209(1), the bank has the following obligations in executing the order:

(a) (i) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning:

(A) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer; or

(B) the means by which payment orders are to be transmitted in the funds transfer.

(ii) If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender:

(a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and

(b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

**History:** **En. Sec. 210, Ch. 410, L. 1991.**

**30-4A-303. Erroneous execution of payment order.** (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under 30-4A-402(3) if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

**History:** **En. Sec. 211, Ch. 410, L. 1991.**

**30-4A-304. Duty of sender to report erroneously executed payment order.** If the sender of a payment order that is erroneously executed as stated in 30-4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under 30-4A-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

**History:** **En. Sec. 212, Ch. 410, L. 1991.**

**30-4A-305. Liability for late or improper execution or failure to execute payment order.** (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of 30-4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of 30-4A-302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express agreement of the receiving bank, evidenced by a record.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.

(5) Reasonable attorney fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

**History:** **En. Sec. 213, Ch. 410, L. 1991; amd. Sec. 35, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 35, Ch. 200, L. 2025. Amendment effective October 1, 2025.

## Part 4
## Payment

**Part Cross-References**

Uniform Commercial Code — bank deposits and collections, Title 30, ch. 4.

**30-4A-401. Payment date.** "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

**History:** **En. Sec. 214, Ch. 410, L. 1991.**

**30-4A-402. Obligation of sender to pay receiving bank.** (1) This section is subject to 30-4A-205 and 30-4A-207.

(2) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to 30-4A-303 and to subsection (5) of this section. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's

order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in 30-4A-204 and 30-4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in 30-4A-302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

**History:** **En. Sec. 215, Ch. 410, L. 1991.**

**30-4A-403. Payment by sender to receiving bank.** (1) Payment of the sender's obligation under 30-4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(b) If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under 30-4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank must be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under 30-4A-402(2) or (3) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

**History:** **En. Sec. 216, Ch. 410, L. 1991.**

**30-4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.** (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

**History:** **En. Sec. 217, Ch. 410, L. 1991.**

**30-4A-405. Payment by beneficiary's bank to beneficiary.** (1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under 30-4A-404(1) occurs when and to the extent:

(a) the beneficiary is notified of the right to withdraw the credit;

(b) the bank lawfully applies the credit to a debt of the beneficiary; or

(c) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under 30-4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) (a) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if:

(i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated;

(ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule; and

(iii) the beneficiary's bank did not receive payment of the payment order that it accepted.

(b) If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under 30-4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order

and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(a) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(b) the beneficiary's bank is entitled to recover payment from the beneficiary;

(c) no payment by the originator to the beneficiary occurs under 30-4A-406; and

(d) subject to 30-4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under 30-4A-402(3) because the funds transfer has not been completed.

**History: En. Sec. 218, Ch. 410, L. 1991.**

**30-4A-406. Payment by originator to beneficiary — discharge of underlying obligation.** (1) Subject to 30-4A-211(5) and 30-4A-405(4) and (5), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(a) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(b) in an amount equal to the amount of the order accepted by the beneficiary's bank but not more than the amount of the originator's order.

(2) (a) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless:

(i) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation;

(ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment;

(iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and

(iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract.

(b) If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under 30-4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is considered to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

**History: En. Sec. 219, Ch. 410, L. 1991.**

## Part 5
## Miscellaneous Provisions

**Part Cross-References**

Automated teller machines — additional standards, 32-6-304.
Personal identification number — restrictions, 32-6-306.

**30-4A-501. Variation by agreement and effect of funds-transfer system rule.** (1) Except as otherwise provided in this chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) (a) "Funds-transfer system rule" means a rule of an association of banks:

(i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders; or

(ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank.

(b) Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer that does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in 30-4A-404(3), 30-4A-405(4), and 30-4A-507(3).

**History:** **En. Sec. 220, Ch. 410, L. 1991.**

**Cross-References**

Banks and trust companies, title 32, ch. 1.

Credit unions, Title 32, ch. 3.

Montana Electronic Funds Transfer Act, Title 32, ch. 6.

**30-4A-502. Creditor process served on receiving bank — setoff by beneficiary's bank.** (1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is considered to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

**History:** **En. Sec. 221, Ch. 410, L. 1991.**

**30-4A-503. Injunction or restraining order with respect to funds transfer.** (1) For proper cause and in compliance with applicable law, a court may restrain:

(a) a person from issuing a payment order to initiate a funds transfer;

(b) an originator's bank from executing the payment order of the originator; or

(c) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

(2) A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

**History:** **En. Sec. 222, Ch. 410, L. 1991.**

**Cross-References**

Injunctions, Title 27, ch. 19.

**30-4A-504. Order in which items and payment orders may be charged to account — order of withdrawals from account.** (1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

**History:** **En. Sec. 223, Ch. 410, L. 1991.**

**30-4A-505. Preclusion of objection to debit of customer's account.** If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within 1 year after the notification was received by the customer.

**History: En. Sec. 224, Ch. 410, L. 1991.**

**30-4A-506. Rate of interest.** (1) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined:

(a) by agreement of the sender and receiving bank; or

(b) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

**History: En. Sec. 225, Ch. 410, L. 1991.**

**30-4A-507. Choice of law.** (1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds-transfer system rule may select the law of a particular jurisdiction to govern:

(i) the rights and obligations between participating banks with respect to payment orders transmitted or processed through the system; or

(ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

(b) A choice of law made pursuant to subsection (3)(a)(i) is binding on participating banks. A choice of law made pursuant to subsection (3)(a)(ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

**History:** **En. Sec. 226, Ch. 410, L. 1991.**

# CHAPTER 5
# UNIFORM COMMERCIAL CODE
# LETTERS OF CREDIT

**Part 1 — Letters of Credit**

30-5-101. Short title.
30-5-102. Repealed.
30-5-103. Repealed.
30-5-104. Repealed.
30-5-105. Repealed.
30-5-106. Repealed.
30-5-107. Repealed.
30-5-108. Repealed.
30-5-109. Repealed.
30-5-110. Repealed.
30-5-111. Repealed.
30-5-112. Repealed.
30-5-113. Repealed.
30-5-114. Repealed.
30-5-115. Repealed.
30-5-116. Repealed.
30-5-117. Repealed.
30-5-118. Security interest of issuer or nominated person.
30-5-119 through 30-5-121 reserved.
30-5-122. Definitions.
30-5-123. Scope.
30-5-124. Formal requirements.
30-5-125. Consideration.
30-5-126. Issuance, amendment, cancellation, and duration.
30-5-127. Confirmer, nominated person, and adviser.
30-5-128. Issuer's rights and obligations.
30-5-129. Fraud and forgery.
30-5-130. Warranties.
30-5-131. Remedies.
30-5-132. Transfer of letter of credit.
30-5-133. Transfer by operation of law.
30-5-134. Assignment of proceeds.
30-5-135. Statute of limitations.
30-5-136. Choice of law and forum.
30-5-137. Subrogation of issuer, applicant, and nominated person.

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## Part 1
## Letters of Credit

**Part Cross-References**

Acceptance and issuance of drafts and letters of credit, 32-1-437.

**30-5-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Letters of Credit.

**History:** **En. Sec. 5-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-101.**

**Cross-References**

DEFINITIONAL

Definition and operation of acceptance, 30-3-410.

**30-5-102. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 5-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-102.**

**30-5-103. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 5-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-103.**

**30-5-104. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-104.

**30-5-105. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-105.

**30-5-106. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-106.

**30-5-107. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-107.

**30-5-108. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-108.

**30-5-109. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-109.

**30-5-110. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-110.

**30-5-111. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-111.

**30-5-112. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-112.

**30-5-113. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-113.

**30-5-114. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-114, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-114; amd. Sec. 8, Ch. 402, L. 1983.

**30-5-115. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-115, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-115.

**30-5-116. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-116, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-116; amd. Sec. 9, Ch. 402, L. 1983.

**30-5-117. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History:** En. Sec. 5-117, Ch. 264, L. 1963; R.C.M. 1947, 87A-5-117.

**30-5-118. Security interest of issuer or nominated person.** (1) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(2) Subject to subsection (2)(c), as long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (1), the security interest continues and is subject to chapter 9A, but:

(a) a security agreement is not necessary to make the security interest enforceable under 30-9A-203(2)(c);

(b) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(c) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, so long as the debtor does not have possession of the document, the security interest is perfected and has priority over a conflicting security interest in the document.

**History:** En. Sec. 161, Ch. 305, L. 1999.

**30-5-119 through 30-5-121 reserved.**

**30-5-122. Definitions.** (1) In this chapter:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) (i) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

(A) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in 30-5-128(5); and

(B) which is capable of being examined for compliance with the terms and conditions of the letter of credit.

(ii) A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of 30-5-124 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer:

(i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and

(ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance" 30-3-410

"Value" 30-3-303, 30-4-209

(3) Chapter 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

**History: En. Sec. 6, Ch. 536, L. 1997.**

**30-5-123. Scope.** (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (4), 30-5-122(1)(i) and (1)(j), 30-5-126(4), and 30-5-134(4), and except to the extent prohibited in 30-5-137(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

**History: En. Sec. 7, Ch. 536, L. 1997; amd. Sec. 34, Ch. 575, L. 2005.**

**30-5-124. Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record.

**History: En. Sec. 8, Ch. 536, L. 1997; amd. Sec. 36, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 36, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-5-125. Consideration.** Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

**History: En. Sec. 9, Ch. 536, L. 1997.**

**30-5-126. Issuance, amendment, cancellation, and duration.** (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance, or if none is stated, after the date on which it is issued.

**History: En. Sec. 10, Ch. 536, L. 1997.**

**30-5-127. Confirmer, nominated person, and adviser.** (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

**History: En. Sec. 11, Ch. 536, L. 1997.**

**30-5-128. Issuer's rights and obligations.** (1) Except as otherwise provided in 30-5-129, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in 30-5-133 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) to honor;

(b) if the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation; or

(c) to give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in 30-5-129(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) the performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) an act or omission of others; or

(c) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5).

(7) If an undertaking constituting a letter of credit under 30-5-122(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this chapter:

(a) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) takes the documents free of claims of the beneficiary or presenter;

(c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

(d) except as otherwise provided in 30-5-130 and 30-5-137, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

**History:** En. Sec. 12, Ch. 536, L. 1997.

**30-5-129. Fraud and forgery.** (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) the issuer shall honor the presentation, if honor is demanded by:

(i) a nominated person who has given value in good faith and without notice of forgery or material.fraud;

(ii) a confirmer who has honored its confirmation in good faith;

(iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or

(iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) all of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a).

**History: En. Sec. 13, Ch. 536, L. 1997.**

**30-5-130. Warranties.** (1) If its presentation is honored, the beneficiary warrants:

(a) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in 30-5-129(1); and

(b) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those chapters.

**History: En. Sec. 14, Ch. 536, L. 1997.**

**30-5-131. Remedies.** (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2).

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

**History:** **En. Sec. 15, Ch. 536, L. 1997.**

**30-5-132. Transfer of letter of credit.** (1) Except as otherwise provided in 30-5-133, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) the transfer would violate applicable law; or

(b) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in 30-5-128(5) or is otherwise reasonable under the circumstances.

**History:** **En. Sec. 16, Ch. 536, L. 1997.**

**30-5-133. Transfer by operation of law.** (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in 30-5-128(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) has the consequences specified in 30-5-128(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of 30-5-129.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2).

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

**History:** **En. Sec. 17, Ch. 536, L. 1997.**

**30-5-134. Assignment of proceeds.** (1) (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit.

(b) The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by chapter 9A or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter 9A or other law.

**History: En. Sec. 18, Ch. 536, L. 1997.**

**30-5-135. Statute of limitations.** An action to enforce a right or obligation arising under this chapter must be commenced within 1 year after the expiration date of the relevant letter of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

**History: En. Sec. 19, Ch. 536, L. 1997.**

**30-5-136. Choice of law and forum.** (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed by the affected parties or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.

(3) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under subsection (4).

(4) A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

(5) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject.

(b) The rules of custom and practice govern except to the extent of any conflict with the nonvariable provisions specified in 30-5-123(3) if:

(i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2);

(ii) the relevant undertaking incorporates rules of custom or practice; and

(iii) there is conflict between this chapter and those rules as applied to that undertaking.

(6) If there is conflict between this chapter and chapter 3, 4, 4A, or 9A, this chapter governs.

(7) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1).

**History: En. Sec. 20, Ch. 536, L. 1997; amd. Sec. 37, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 37, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-5-137. Subrogation of issuer, applicant, and nominated person.** (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1).

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

**History: En. Sec. 21, Ch. 536, L. 1997.**

# CHAPTER 6
# UNIFORM COMMERCIAL CODE
# BULK TRANSFERS
# (Repealed)

**Part 1 — Bulk Transfers (Repealed)**

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## Part 1
## Bulk Transfers
## (Repealed)

**30-6-101. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-101.**

**30-6-102. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-102.**

**30-6-103. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-103.**

**30-6-104. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-104.**

**30-6-105. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-105.**

**30-6-106. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-106.**

**30-6-107. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-107.**

**30-6-108. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-108.**

**30-6-109. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-109.**

**30-6-110. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-110.**

**30-6-111. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 6-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-6-111.**

**30-6-112. Repealed.** Sec. 85, Ch. 10, L. 1993.
**History: En. Sec. 227, Ch. 410, L. 1991.**

## CHAPTER 7

## UNIFORM COMMERCIAL CODE — WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

### Part 1 — General

30-7-101. Short title.
30-7-102. Definitions and index of definitions.
30-7-103. Relation of chapter to treaty or statute.
30-7-104. Negotiable and nonnegotiable document of title.
30-7-105. Repealed.
30-7-106. Reissuance in alternative medium.
30-7-107. Control of electronic document of title.

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30-7-202. Form of warehouse receipt.
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30-7-204. Duty of care — contractual limitation of warehouse's liability.
30-7-205. Title under warehouse receipt defeated in certain cases.
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30-7-209. Lien of warehouse.
30-7-210. Enforcement of warehouse's lien.

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30-7-303. Diversion — reconsignment — change of instructions.
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### Part 4 — Warehouse Receipts and Bills of Lading General Obligations

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30-7-402. Duplicate receipt or bill — overissue.
30-7-403. Obligation of warehouse or carrier to deliver — excuse.
30-7-404. No liability for good faith delivery pursuant to document of title.

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30-7-501. Form of negotiation and requirements of due negotiation.
30-7-502. Rights acquired by due negotiation.
30-7-503. Document of title to goods defeated in certain cases.
30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — stoppage of delivery.
30-7-505. Endorser not a guarantor for other parties.
30-7-506. Delivery without endorsement — right to compel endorsement.
30-7-507. Warranties on negotiation or delivery of document of title.
30-7-508. Warranties of collecting bank as to documents of title.
30-7-509. Adequate compliance with commercial contract.

### Part 6 — Warehouse Receipts and Bills of Lading Miscellaneous Provisions

30-7-601. Lost and missing documents.
30-7-602. Attachment of goods covered by negotiable document of title.
30-7-603. Conflicting claims — interpleader.

### Part 7 — Penalties (Repealed)

## Part 1
## General

**30-7-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Documents of Title.

**History:** En. Sec. 7-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-101.

**30-7-102. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Carrier" means a person that issues a bill of lading.

(c) "Consignee" means the person named in a bill of lading to which or to whose order the bill promises delivery.

(d) "Consignor" means the person named in a bill of lading as the person from which the goods have been received for shipment.

(e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(h) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(i) "Person entitled under a document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(j) "Shipper" means a person that enters into a contract of transportation with a carrier.

(k) "Warehouse" means a person engaged in the business of storing goods for hire.

(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(a) "Contract for sale". 30-2-106.

(b) "Lessee in ordinary course". 30-2A-103.

(c) "Receipt" of goods. 30-2-103.

(3) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History:** En. Sec. 7-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-102; amd. Sec. 1, Ch. 137, L. 1979; amd. Sec. 35, Ch. 575, L. 2005; amd. Sec. 38, Ch. 200, L. 2025.

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 38, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Document of title, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Receipt of goods, 30-2-103.

Right, 30-1-201.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

**30-7-103. Relation of chapter to treaty or statute.** (1) This chapter is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(2) This chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this chapter. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

(3) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

(4) To the extent there is a conflict between the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, and this chapter, this chapter governs.

**History: En. Sec. 7-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-103; amd. Sec. 36, Ch. 575, L. 2005.**

**Cross-References**

Who may issue warehouse receipt — storage under government bond, 30-7-201.
Form of warehouse receipt — essential terms — optional terms, 30-7-202.
Duty of care — contractual limitation of warehouseman's liability, 30-7-204.
Termination of storage at warehouseman's option, 30-7-206.
Duty of care — contractual limitation of carrier's liability, 30-7-309.
Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

**30-7-104. Negotiable and nonnegotiable document of title.** (1) A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(2) A document of title other than one described in subsection (1) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

(3) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

**History: En. Sec. 7-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-104; amd. Sec. 37, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bearer, 30-1-201.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document of title, 30-1-201.
Overseas, 30-2-323.
Person, 30-1-201.
Warehouse receipt, 30-1-201.

**30-7-105. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History: En. Sec. 7-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-105.**

**30-7-106. Reissuance in alternative medium.** (1) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(a) the person entitled under the electronic document surrenders control of the document to the issuer; and

(b) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(2) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (1):

(a) the electronic document ceases to have any effect or validity; and

(b) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(a) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(b) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(4) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with subsection (3):

(a) the tangible document ceases to have any effect or validity; and

(b) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**History:** **En. Sec. 38, Ch. 575, L. 2005.**

**30-7-107. Control of electronic document of title.** (1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(2) A system satisfies subsection (1), and a person has control of an electronic document of title, if the document is created, stored, and transferred in a manner that:

(a) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subsections (2)(d), (2)(e), and (2)(f), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to which the document was issued; or

(ii) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) copies or amendments that add or change an identified transferee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(3) A system satisfies subsection (1), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(a) enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(b) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and

(c) gives the person exclusive power, subject to subsection (4), to:

(i) prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(ii) transfer control of each authoritative electronic copy.

(4) Subject to subsection (5), a power is exclusive under subsection (3)(c)(i) and (3)(c)(ii) even if:

(a) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(b) the power is shared with another person.

(5) A power of a person is not shared with another person under subsection (4)(b) and the person's power is not exclusive if:

(a) the person can exercise the power only if the power also is exercised by the other person; and

(b) the other person:

(i) can exercise the power without exercise of the power by the person; or

(ii) is the transferor to the person of an interest in the document of title.

(6) If a person has the powers specified in subsection (3)(c)(i) and (3)(c)(ii), the powers are presumed to be exclusive.

(7) A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(a) has control of the document and acknowledges that it has control on behalf of the person; or

(b) obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(8) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(9) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than chapter 9A or this chapter otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**History: En. Sec. 39, Ch. 575, L. 2005; amd. Sec. 39, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 39, Ch. 200, L. 2025. Amendment effective October 1, 2025.

## Part 2
## Warehouse Receipts — Special Provisions

**Part Cross-References**

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.
Applicability of U.C.C. to law of deposits for hire, 70-6-401.
Applicability of U.C.C. to common carriers, merchants, and warehousemen, 70-9-401.

**30-7-201. Person that may issue a warehouse receipt — storage under government bond.** (1) A warehouse receipt may be issued by any warehouse.

(2) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is considered to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

**History: En. Sec. 7-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-201; amd. Sec. 40, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.
Forgery, 45-6-325.

DEFINITIONAL

Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

**30-7-202. Form of warehouse receipt.** (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(a) the location of the warehouse facility where the goods are stored;

(b) the date of issue of the receipt;

(c) the unique identification code of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(e) the rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;

(f) a description of the goods or the packages containing them;

(g) the signature of the warehouse or its agent;

(h) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, the fact of that ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, but if the precise amount of advances made or of liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(3) A warehouse may insert in its receipt any terms that are not contrary to this code and do not impair its obligation of delivery under 30-7-403 or its duty of care under 30-7-204. Any contrary provisions are ineffective.

**History:** **En. Sec. 7-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-202; amd. Sec. 41, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Security interest, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

**30-7-203. Liability for nonreceipt or misdescription.** A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or

(2) the party or purchaser has notice of the nonreceipt or misdescription.

**History:** **En. Sec. 7-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-203; amd. Sec. 42, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling, 30-7-301.
Forgery, 45-6-325.

DEFINITIONAL

Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

**30-7-204. Duty of care — contractual limitation of warehouse's liability.** (1) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or storage agreement.

**History: En. Sec. 7-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-204; amd. Sec. 43, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Duty of care — contractual limitation of carrier's liability, 30-7-309.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Bailment — deposit, Title 70, ch. 6.

DEFINITIONAL

Action, 30-1-201.
Agreed, 30-1-201.
Goods, 30-7-102.
Reasonable time, 30-1-204.
Sign, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.
Written, 30-1-201.

**30-7-205. Title under warehouse receipt defeated in certain cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

**History: En. Sec. 7-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-205; amd. Sec. 44, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.
Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Buyer in ordinary course of business, 30-1-201.
Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

**30-7-206. Termination of storage at warehouse's option.** (1) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to 30-7-210.

(2) If a warehouse in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of its lien within the time prescribed in subsection (1) and 30-7-210, the warehouse may specify in the notice given under subsection (1) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(4) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

**History: En. Sec. 7-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-206; amd. Sec. 45, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Reasonable time, 30-1-204.
Value, 30-1-201.
Warehouseman, 30-7-102.

**30-7-207. Goods must be kept separate — fungible goods.** (1) Unless the warehouse receipt otherwise provides, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(2) If different lots of fungible goods are commingled, the goods owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

**History: En. Sec. 7-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-207; amd. Sec. 46, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.

DEFINITIONAL

Delivery, 30-1-201.
Duly negotiate, 30-7-501.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

**30-7-208. Altered warehouse receipts.** If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

**History: En. Sec. 7-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-208; amd. Sec. 47, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.

DEFINITIONAL

Issuer, 30-7-102.
Notice, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.
Warehouse receipt, 30-1-201.

**30-7-209. Lien of warehouse.** (1) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouse may also reserve a security interest under chapter 9A against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. A security interest is governed by chapter 9A.

(3) A warehouse's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(a) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under 30-7-403; or with power of disposition under 30-2-403, 30-2A-304(2), 30-2A-305(2), or 30-9A-320 or other statute or rule of law; or

(b) acquiesce in the procurement by the bailor or its nominee of any document.

(4) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(5) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**History: En. Sec. 7-209, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-209; amd. Sec. 48, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Manner of seller's tender of delivery, 30-2-503.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Deliver, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Money, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Right, 30-1-201.

Security interest, 30-1-201.
Value, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

**30-7-210. Enforcement of warehouse's lien.** (1) Except as provided in subsection (2), a warehouse's lien may be enforced by public or private sale of the goods, in block or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) A warehouse's lien on goods, other than goods stored by a merchant in the course of its business, may be enforced only if the following requirements are satisfied:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(c) The sale must conform to the terms of the notification.

(d) The sale must be held at the nearest suitable place to where the goods are held or stored.

(e) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold, but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(4) A warehouse may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against whom the lien was valid, despite the warehouse's noncompliance with this section.

(6) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(7) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(8) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with either subsection (1) or (2).

(9) . A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**History:** **En. Sec. 7-210, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-210; amd. Sec. 2, Ch. 137, L. 1979; amd. Sec. 49, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Liens generally, Title 71, ch. 3, part 1.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouseman, 30-7-102.

## Part 3
## Bills of Lading — Special Provisions

**30-7-301. Liability for nonreceipt or misdescription — "said to contain" — "shipper's load and count" — improper handling.** (1) A consignee of a nonnegotiable bill which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count", or words of similar import, if that indication is true.

(2) If goods are loaded by the issuer of the bill of lading, the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as "shipper's weight, load and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(3) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or other words of similar import are ineffective.

(4) The issuer, by including in the bill of lading the words "shipper's weight, load and count", or words of similar import, may indicate that the goods were loaded by the shipper, and if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(5) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

**History: En. Sec. 7-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-301; amd. Sec. 50, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Liability for nonreceipt or misdescription, 30-7-203.
Duty of care — contractual limitation of carrier's liability, 30-7-309.
Irregularities in issue of receipt or bill or conduct of issuer, 30-7-401.
Forgery, 45-6-325.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignee, 30-7-102.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.

Holder, 30-1-201.
Issuer, 30-7-102.
Notice, 30-1-201.
Party, 30-1-201.
Purchaser, 30-1-201.
Receipt of goods, 30-2-103.
Value, 30-1-201.

**30-7-302. Through bills of lading and similar documents of title.** (1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by persons acting as its agents or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by that person, the person is subject with respect to its own performance while the goods are in its possession to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(3) The issuer of a through bill of lading or other document of title described in subsection (1) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(a) the amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(b) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach.

**History:** **En. Sec. 7-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-302; amd. Sec. 51, Ch. 575, L. 2005; amd. Sec. 899, Ch. 56, L. 2009.**

**Cross-References**

GENERAL

Form of bill of lading required in overseas shipment — "overseas", 30-2-323.

DEFINITIONAL

Agreement, 30-1-201.
Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Overseas, 30-2-323.
Party, 30-1-201.
Person, 30-1-201.

**30-7-303. Diversion — reconsignment — change of instructions.** (1) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill even if the consignee has given contrary instructions; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(d) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(2) Unless instructions described in subsection (1) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

**History: En. Sec. 7-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-303; amd. Sec. 52, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Rights acquired in absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Term, 30-1-201.

**30-7-304. Tangible bills of lading in a set.** (1) Except as customary in international transportation, a bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(4) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

**History: En. Sec. 7-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-304; amd. Sec. 53, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Overseas, 30-2-323.
Person, 30-1-201.
Receipt of goods, 30-2-103.

**30-7-305. Destination bills.** (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to 30-7-106, may procure a substitute bill to be issued at any place designated in the request.

**History: En. Sec. 7-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-305; amd. Sec. 54, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Goods, 30-7-102.
Issuer, 30-7-102.
Receipt of goods, 30-2-103.

**30-7-306. Altered bills of lading.** An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

**History: En. Sec. 7-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-306.**

**Cross-References**

DEFINITIONAL

Bill of lading, 30-1-201.
Issuer, 30-7-102.

**30-7-307. Lien of carrier.** (1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated, a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(3) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**History: En. Sec. 7-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-307; amd. Sec. 55, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Lien of warehouseman, 30-7-209.
Holder of lien not entitled to compensation, 71-3-112.

DEFINITIONAL

Bill of lading, 30-1-201.
Consignor, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

**30-7-308. Enforcement of carrier's lien.** (1) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying

with this section. In that event, the goods may not be sold, but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(3) A carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(5) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(6) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(7) A carrier's lien may be enforced pursuant to either subsection (1) or the procedure set forth in 30-7-210(2).

(8) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

**History:** **En. Sec. 7-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-308; amd. Sec. 56, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Bill of lading, 30-1-201.
Creditor, 30-1-201.
Delivery, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Notifies, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.

**30-7-309. Duty of care — contractual limitation of carrier's liability.** (1) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or transportation agreement.

**History:** **En. Sec. 7-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-309; amd. Sec. 57, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.

DEFINITIONAL

Action, 30-1-201.
Bill of lading, 30-1-201.
Consignor, 30-7-102.
Document, 30-7-102.
Goods, 30-7-102.
Value, 30-1-201.

## Part 4
## Warehouse Receipts and Bills of Lading
## General Obligations

**30-7-401. Irregularities in issue of receipt or bill or conduct of issuer.** The obligations imposed by this chapter on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issue, form or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

(4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

**History:** **En. Sec. 7-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-401; amd. Sec. 58, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Liability for nonreceipt or misdescription, 30-7-203.
Duty of care — contractual limitation of warehouseman's liability, 30-7-204.
Liability for nonreceipt or misdescription —"said to contain" — "shippers load and count" — improper handling, 30-7-301.
Duty of care — contractual limitation of carrier's liability, 30-7-309.

DEFINITIONAL

Bailee, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-1-201.

**30-7-402. Duplicate receipt or bill — overissue.** A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to 30-7-106. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

**History:** **En. Sec. 7-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-402; amd. Sec. 59, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Goods must be kept separate — fungible goods, 30-7-207.
Bills of lading in a set, 30-7-304.
Document of title to goods defeated in certain cases, 30-7-503.
Lost and missing documents, 30-7-601.
Forgery, 45-6-325.

DEFINITIONAL

Bill of lading, 30-1-201.
Conspicuous, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Fungible goods, 30-1-201.
Goods, 30-7-102.
Issuer, 30-7-102.
Right, 30-1-201.

**30-7-403. Obligation of warehouse or carrier to deliver — excuse.** (1) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(d) the exercise by a seller of its right to stop delivery pursuant to 30-2-705 or by a lessor of its right to stop delivery pursuant to 30-2A-526;

(e) a diversion, reconsignment, or other disposition pursuant to 30-7-303;

(f) release, satisfaction, or any other fact affording a personal defense against the claimant; or

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless a person claiming the goods is one against which the document of title does not confer a right under 30-7-503(1):

(a) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(b) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

**History: En. Sec. 7-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-403; amd. Sec. 60, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Duty of care — contractual limitation of warehouseman's liability, 30-7-204.
Duty of care — contractual limitation of carrier's liability, 30-7-309.
Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.
Conspicuous, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Right, 30-1-201.
Terms, 30-1-201.
Warehouseman, 30-7-102.
Written, 30-1-201.

**30-7-404. No liability for good faith delivery pursuant to document of title.** A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of the document of title or pursuant to this chapter is not liable for the goods even if:

(1) the person from whom the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

**History: En. Sec. 7-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-404; amd. Sec. 61, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document of title, 30-1-201.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Receipt of goods, 30-2-103.
Term, 30-1-201.

## Part 5
## Warehouse Receipts and Bills of Lading Negotiation and Transfer

**30-7-501. Form of negotiation and requirements of due negotiation.** (1) The following rules apply to a tangible negotiable document of title:

(a) If the document's original terms run to the order of a named person, the document is negotiated by the named person's endorsement and delivery. After the named person's endorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(b) If the document's original terms run to bearer, it is negotiated by delivery alone;

(c) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(d) Negotiation of the document after it has been endorsed to a named person requires endorsement by the named person as well as delivery.

(e) A document is duly negotiated if it is negotiated in the manner stated in this subsection (1)(e) to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(2) The following rules apply to a negotiable electronic document of title:

(a) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.

(b) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(c) A document is duly negotiated if it is negotiated in the manner stated in this subsection (2) to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(3) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(4) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

**History:** **En. Sec. 7-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-501; amd. Sec. 62, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Rights acquired by due negotiation, 30-7-502.
Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bearer, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Document of title, 30-1-201.
Good faith, 30-1-201.
Holder, 30-1-201.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Value, 30-1-201.

**30-7-502. Rights acquired by due negotiation.** (1) Subject to 30-7-205 and 30-7-503, on fungible goods, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to 30-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(a) the due negotiation or any prior due negotiation constituted a breach of duty;

(b) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

(c) a previous sale or other transfer of the goods or document has been made to a third person.

**History: En. Sec. 7-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-502; amd. Sec. 63, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Relation of chapter to treaty, statute, tariff, classification, or regulation, 30-7-103.
Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Fungible, 30-1-201.
Goods, 30-7-102.
Holder, 30-1-201.
Issuer, 30-7-102.
Person, 30-1-201.
Rights, 30-1-201.
Term, 30-1-201.
Warehouse receipt, 30-1-201.

**30-7-503. Document of title to goods defeated in certain cases.** (1) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(a) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell; with power to obtain delivery under 30-7-403; or with power of disposition under 30-2-403, 30-2A-304(2), 30-2A-305(2), or 30-9A-320 or other statute or rule of law; or

(b) acquiesce in the procurement by the bailor or the bailor's nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under 30-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**History: En. Sec. 7-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-503; amd. Sec. 142, Ch. 305, L. 1999; amd. Sec. 64, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Title under warehouse receipt defeated in certain cases, 30-7-205.
Duplicate receipt or bill — overissue, 30-7-402.
No liability for good faith delivery pursuant to receipt or bill, 30-7-404.
Form of negotiation and requirements of "due negotiation", 30-7-501.
Rights acquired in absence of due negotiation — effect of diversion — seller's stoppage of delivery, 30-7-504.

DEFINITIONAL

Bill of lading, 30-1-201.
Contract for sale, 30-2-106.
Delivery, 30-1-201.
Delivery order, 30-7-102.
Document, 30-7-102.
Document of title, 30-1-201.
Duly negotiate, 30-7-501.
Goods, 30-7-102.
Person, 30-1-201.
Right, 30-1-201.
Warehouse receipt, 30-1-201.

**30-7-504. Rights acquired in the absence of due negotiation — effect of diversion — stoppage of delivery.** (1) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document of title, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402 or 30-2A-308; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; or

(c) as against the bailee, by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery of goods pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705 or a lessor under 30-2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

**History: En. Sec. 7-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-504; amd. Sec. 65, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Power to transfer — good faith purchase of goods — "entrusting", 30-2-403.
Diversion — reconsignment — change of instructions, 30-7-303.
Obligation of carrier or warehouseman to deliver, 30-7-403.
Delivery without endorsement — right to compel endorsement, 30-7-506.

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Buyer in ordinary course of business, 30-1-201.
Consignee, 30-7-102.
Consignor, 30-7-102.
Creditor, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Duly negotiate, 30-7-501.
Good faith, 30-1-201.
Goods, 30-7-102.
Honor, 30-1-201.
Notification, 30-1-201.
Purchaser, 30-1-201.
Rights, 30-1-201.

**30-7-505. Endorser not a guarantor for other parties.** The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

**History: En. Sec. 7-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-505.**

**Cross-References**

GENERAL

Rights acquired by due negotiation, 30-7-502.

DEFINITIONAL

Bailee, 30-7-102.
Document of title, 30-1-201.
Party, 30-1-201.

**30-7-506. Delivery without endorsement — right to compel endorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have its transferor supply any necessary endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied.

**History: En. Sec. 7-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-506; amd. Sec. 66, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.
Form of negotiation and requirements of "due negotiation", 30-7-501.
Endorser not guarantor for other parties, 30-7-505.

DEFINITIONAL

Document of title, 30-1-201.
Rights, 30-1-201.

**30-7-507. Warranties on negotiation or delivery of document of title.** If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under 30-7-508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

(1) the document is genuine;

(2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

**History: En. Sec. 7-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-507; amd. Sec. 67, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.
Express warranties by affirmation, promise, description, or sample, 30-2-313.
Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.
Third-party beneficiaries of warranties express or implied, 30-2-318.
Warranties of collecting bank as to documents, 30-7-508.

DEFINITIONAL

Document, 30-7-102.
Document of title, 30-1-201.
Genuine, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Purchaser, 30-1-201.
Value, 30-1-201.

**30-7-508. Warranties of collecting bank as to documents of title.** A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

**History: En. Sec. 7-508, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-508; amd. Sec. 68, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Effect of instructions, 30-4-203.
Handling of documentary drafts — duty to send for presentment and to notify customer of dishonor, 30-4-501.
Presentment of "on arrival" drafts, 30-4-502.
Responsibility of presenting bank for documents and goods — report of reasons for dishonor — referee in case of need, 30-4-503.
Privilege of presenting bank to deal with goods — security interest for expenses, 30-4-504.
Warranties on negotiation or transfer of receipt or bill, 30-7-507.

DEFINITIONAL

Collecting bank, 30-4-105.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.

**30-7-509. Adequate compliance with commercial contract.** Whether a document is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a credit is governed by chapter 2, 2A, or 5.

**History:** **En. Sec. 7-509, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-509; amd. Sec. 69, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Contract for sale, 30-2-106.
Document, 30-7-102.

## Part 6
## Warehouse Receipts and Bills of Lading Miscellaneous Provisions

**30-7-601. Lost and missing documents.** (1) If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(2) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within 1 year after the delivery.

**History:** **En. Sec. 7-601, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-601; amd. Sec. 70, Ch. 575, L. 2005.**

**Cross-References**

DEFINITIONAL

Bailee, 30-7-102.
Bill of lading, 30-1-201.
Delivery, 30-1-201.
Document, 30-7-102.
Good faith, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Warehouseman, 30-7-102.
Warehouse receipt, 30-7-201.

**30-7-602. Attachment of goods covered by negotiable document of title.** Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

**History:** **En. Sec. 7-602, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-602; amd. Sec. 71, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Document of title to goods defeated in certain cases, 30-7-503.

DEFINITIONAL

Bailee, 30-7-102.
Delivery, 30-1-201.
Document, 30-7-102.
Goods, 30-7-102.
Notice, 30-1-201.
Person, 30-1-201.
Purchase, 30-1-201.
Value, 30-1-201.

**30-7-603. Conflicting claims — interpleader.** If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action.

**History:** **En. Sec. 7-603, Ch. 264, L. 1963; R.C.M. 1947, 87A-7-603; amd. Sec. 72, Ch. 575, L. 2005.**

**Cross-References**

GENERAL

Obligation of warehouseman or carrier to deliver — excuse, 30-7-403.

DEFINITIONAL

Action, 30-1-201.
Bailee, 30-7-102.
Delivery, 30-1-201.
Goods, 30-7-102.
Person, 30-1-201.
Reasonable time, 30-1-204.

## Part 7
## Penalties
## (Repealed)

**30-7-701. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 50, Ch. 154, L. 1917; re-en. Sec. 4128, R.C.M. 1921; re-en. Sec. 4128, R.C.M. 1935; R.C.M. 1947, 88-150.**

**30-7-702. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 51, Ch. 154, L. 1917; re-en. Sec. 4129, R.C.M. 1921; re-en. Sec. 4129, R.C.M. 1935; R.C.M. 1947, 88-151.**

**30-7-703. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 52, Ch. 154, L. 1917; re-en. Sec. 4130, R.C.M. 1921; re-en. Sec. 4130, R.C.M. 1935; amd. Sec. 11-154, Ch. 264, L. 1963; R.C.M. 1947, 88-152.**

**30-7-704. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 53, Ch. 154, L. 1917; re-en. Sec. 4131, R.C.M. 1921; re-en. Sec. 4131, R.C.M. 1935; R.C.M. 1947, 88-153.**

**30-7-705. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 54, Ch. 154, L. 1917; re-en. Sec. 4132, R.C.M. 1921; re-en. Sec. 4132, R.C.M. 1935; amd. Sec. 11-155, Ch. 264, L. 1963; R.C.M. 1947, 88-154.**

**30-7-706. Repealed.** Sec. 90, Ch. 575, L. 2005.

**History:** **En. Sec. 55, Ch. 154, L. 1917; re-en. Sec. 4133, R.C.M. 1921; re-en. Sec. 4133, R.C.M. 1935; R.C.M. 1947, 88-155.**

# CHAPTER 8
# UNIFORM COMMERCIAL CODE INVESTMENT SECURITIES

### Part 1 — Short Title and General Matters

30-8-101. Short title.
30-8-102. Repealed.
30-8-103. Repealed.
30-8-104. Repealed.
30-8-105. Repealed.
30-8-106. Repealed.
30-8-107. Repealed.
30-8-108. Repealed.
30-8-109 through 30-8-111 reserved.
30-8-112. Definitions and index of definitions.
30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets.
30-8-114. Acquisition of security or financial asset or interest therein.
30-8-115. Notice of adverse claim.
30-8-116. Control.
30-8-117. Whether indorsement, instruction, or entitlement order is effective.
30-8-118. Warranties in direct holding.
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30-8-120. Applicability — choice of law.
30-8-121. Clearing corporation rules.
30-8-122. Creditor's legal process.
30-8-123. Statute of frauds inapplicable.
30-8-124. Evidentiary rules concerning certificated securities.
30-8-125. Securities intermediary and others not liable to adverse claimant.
30-8-126. Securities intermediary as purchaser for value.

### Part 2 — Issue and Issuer

30-8-201. Repealed.
30-8-202. Repealed.
30-8-203. Repealed.
30-8-204. Repealed.
30-8-205. Repealed.
30-8-206. Repealed.
30-8-207. Repealed.
30-8-208. Repealed.
30-8-209 and 30-8-210 reserved.
30-8-211. Issuer.
30-8-212. Issuer's responsibility and defenses — notice of defect or defense.
30-8-213. Staleness as notice of defect or defense.
30-8-214. Effect of issuer's restriction on transfer.
30-8-215. Effect of unauthorized signature on security certificate.
30-8-216. Completion of alteration of security certificate.
30-8-217. Rights and duties of issuer with respect to registered owners.
30-8-218. Effect of signature of authenticating trustee, registrar, or transfer agent.
30-8-219. Issuer's lien.
30-8-220. Overissue.

### Part 3 — Transfer of Certificated and Uncertificated Securities

30-8-301. Repealed.
30-8-302. Repealed.
30-8-303. Repealed.
30-8-304. Repealed.
30-8-305. Repealed.
30-8-306. Repealed.
30-8-307. Repealed.
30-8-308. Repealed.
30-8-309. Repealed.
30-8-310. Repealed.
30-8-311. Repealed.
30-8-312. Repealed.
30-8-313. Repealed.
30-8-314. Repealed.
30-8-315. Repealed.
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30-8-317. Repealed.
30-8-318. Repealed.
30-8-319. Repealed.
30-8-320. Repealed.
30-8-321. Repealed.
30-8-322 through 30-8-330 reserved.
30-8-331. Delivery.
30-8-332. Rights of purchaser.
30-8-333. Protected purchaser.
30-8-334. Indorsement.
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**Part 4 — Registration**

30-8-401. Repealed.
30-8-402. Repealed.
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30-8-404. Repealed.
30-8-405. Repealed.
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30-8-409 and 30-8-410 reserved.
30-8-411. Duty of issuer to register transfer.
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30-8-413. Demand that issuer not register transfer.
30-8-414. Wrongful registration.
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30-8-417. Authenticating trustee, transfer agent, and registrar.

**Part 5 — Security Entitlements**

30-8-501. Securities account — acquisition of security entitlement from securities intermediary.
30-8-502. Assertion of adverse claim against entitlement holder.
30-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.
30-8-504. Duty of securities intermediary to maintain financial asset.
30-8-505. Duty of securities intermediary with respect to payments and distributions.
30-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.
30-8-507. Duty of securities intermediary to comply with entitlement order.
30-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.
30-8-509. Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.
30-8-510. Rights of purchaser of security entitlement from entitlement holder.
30-8-511. Priority among security interests and entitlement holders.

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**Chapter Cross-References**

Registration of public obligations, Title 17, ch. 5, part 11.
Securities regulation, Title 30, ch. 10.

## Part 1
## Short Title and General Matters

**Part Cross-References**

Municipal revenue bonds — interim receipts or certificates, 7-7-4435.
Refunding revenue bonds to be fully negotiable, 7-7-4608.
Parking commissions — bonds to be negotiable, 7-14-4661.

**30-8-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Investment Securities.

**History: En. Sec. 8-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-101.**

**30-8-102. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-102, Ch. 264, L. 1963; amd. Sec. 1, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-102; amd. Sec. 10, Ch. 402, L. 1983.**

**30-8-103. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-103; amd. Sec. 11, Ch. 402, L. 1983.**

**30-8-104. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-104; amd. Sec. 12, Ch. 402, L. 1983.**

**30-8-105. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-105; amd. Sec. 13, Ch. 402, L. 1983.**

**30-8-106. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-106; amd. Sec. 14, Ch. 402, L. 1983.**

**30-8-107. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-107; amd. Sec. 15, Ch. 402, L. 1983.**

**30-8-108. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 16, Ch. 402, L. 1983.**

**30-8-109 through 30-8-111 reserved.**

**30-8-112. Definitions and index of definitions.** (1) In this chapter:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form" as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(f) "Communicate" means to:

(i) send a signed record; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of 30-8-501(2)(b) or (2)(c), that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) (i) "Financial asset," except as otherwise provided in 30-8-113, means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

(ii) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in 30-8-113, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5 of this chapter.

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) The following definitions in this chapter and other chapters apply to this chapter:

"Appropriate person". 30-8-117.
"Control". 30-8-116.
"Controllable account". 30-9A-102.
"Controllable electronic record". 30-12A-102.
"Controllable payment intangible". 30-9A-102.
"Delivery". 30-8-331.
"Investment company security". 30-8-113.
"Issuer". 30-8-211.
"Overissue". 30-8-220.
"Protected purchaser". 30-8-333.
"Securities account". 30-8-501.

(3) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**History:** **En. Sec. 22, Ch. 536, L. 1997; amd. Sec. 40, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 40, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Bank, 30-1-201.
Person, 30-1-201.
Send, 30-1-201.
Signed, 30-1-201.
Writing, 30-1-201.

**30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets.** (1) A share or similar equity interest issued by a corporation, business trust, joint-stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in 30-9A-102, is not a security or a financial asset.

(7) A document of title, as defined in 30-1-201(2)(p), is not a financial asset unless 30-8-112(1)(i)(i)(C) applies.

(8) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless 30-8-112(1)(i)(i)(C) applies.

**History: En. Sec. 23, Ch. 536, L. 1997; amd. Sec. 143, Ch. 305, L. 1999; amd. Sec. 73, Ch. 575, L. 2005; amd. Sec. 41, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 41, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

DEFINITIONAL

Clearing corporation, 30-8-112.
Financial asset, 30-8-112.
Security, 30-8-112.
Security certificate, 30-8-112.

**30-8-114. Acquisition of security or financial asset or interest therein.** (1) A person acquires a security or an interest therein, under this chapter, if:

(a) the person is a purchaser to whom a security is delivered pursuant to 30-8-331; or

(b) the person acquires a security entitlement to the security pursuant to 30-8-501.

(2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in part 5 of this chapter, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in 30-8-503.

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

**History: En. Sec. 24, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Delivery, 30-8-331.
Financial asset, 30-8-112.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security entitlement, 30-8-112.

**30-8-115. Notice of adverse claim.** (1) A person has notice of an adverse claim if:

(a) the person knows of the adverse claim;

(b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) 1 year after a date set for presentment or surrender for redemption or exchange; or

(b) 6 months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under chapter 9A is not notice of an adverse claim to a financial asset.

**History: En. Sec. 25, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Bearer form, 30-8-112.
Certificated security, 30-8-112.
Financial asset, 30-8-112.
Knowledge, 30-1-201.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Representative, 30-1-201.
Security certificate, 30-8-112.

**30-8-116. Control.** (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:
(a) the uncertificated security is delivered to the purchaser; or
(b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
(4) A purchaser has "control" of a security entitlement if:
(a) the purchaser becomes the entitlement holder;
(b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
(c) another person, other than the transferor to the purchaser of an interest in the security entitlement:
(i) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or
(ii) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.
(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
(6) A purchaser who has satisfied the requirements of subsection (3) or (4) has control even if the registered owner in the case of subsection (3) or the entitlement holder in the case of subsection (4) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.
(8) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.
(9) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than chapter 9A or this chapter otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to any other person.

**History: En. Sec. 26, Ch. 536, L. 1997; amd. Sec. 144, Ch. 305, L. 1999; amd. Sec. 42, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 42, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Delivery, 30-8-331.
Effective, 30-8-117.
Entitlement holder, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-117. Whether indorsement, instruction, or entitlement order is effective.** (1) "Appropriate person" means:
(a) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;
(b) with respect to an instruction, the registered owner of an uncertificated security;
(c) with respect to an entitlement order, the entitlement holder;

(d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) it is made by the appropriate person;

(b) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under 30-8-116(3)(b) or (4)(b); or

(c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

**History: En. Sec. 27, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Representative, 30-1-201.
Securities account, 30-8-501.
Security, 30-8-112.
Security certificate, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-118. Warranties in direct holding.** (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser that:

(a) the certificate is genuine and has not been materially altered;

(b) the transferor or indorser does not know of any fact that might impair the validity of the security;

(c) there is no adverse claim to the security;

(d) the transfer does not violate any restriction on transfer;

(e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) the transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) the security is valid;

(c) there is no adverse claim to the security; and
(d) at the time the instruction is presented to the issuer:
(i) the purchaser will be entitled to the registration of transfer;
(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
(iii) the transfer will not violate any restriction on transfer; and
(iv) the requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:
(a) the uncertificated security is valid;
(b) there is no adverse claim to the security;
(c) the transfer does not violate any restriction on transfer; and
(d) the transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:
(a) there is no adverse claim to the security; and
(b) the indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
(a) the instruction is effective; and
(b) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7).

(9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

**History: En. Sec. 28, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Broker, 30-8-112.
Certificated security, 30-8-112.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Person, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-119. Warranties in indirect holding.** (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) there is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in 30-8-118(1) or (2).

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in 30-8-118(1) or (2).

**History: En. Sec. 29, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Appropriate person, 30-8-117.
Entitlement holder, 30-8-112.
Entitlement order, 30-8-112.
Instruction, 30-8-112.
Person, 30-1-201.
Securities account, 30-8-501.
Securities intermediary, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-120. Applicability — choice of law.** (1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) the validity of a security;

(b) the rights and duties of the issuer with respect to registration of transfer;

(c) the effectiveness of registration of transfer by the issuer;

(d) whether the issuer owes any duties to an adverse claimant to a security; and

(e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

(a) acquisition of a security entitlement from the securities intermediary;

(b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsections (1)(b) through (1)(e).

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the security intermediary's jurisdiction for the purposes of this part, this chapter, chapters 1 through 9A, and 12A of this title, that jurisdiction is the securities intermediary's jurisdiction.

(b) If subsection (5)(a) does not apply and an agreement between the securities intermediary and its entitlement holder expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither subsection (5)(a) nor (5)(b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(d) If subsection (5)(a), (5)(b), or (5)(c) does not apply, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(e) If subsection (5)(a), (5)(b), (5)(c), or (5)(d) does not apply, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

(7) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (1) or (2) even if the matter or transaction does not bear any relation to the jurisdiction.

**History: En. Sec. 30, Ch. 536, L. 1997; amd. Sec. 145, Ch. 305, L. 1999; amd. Sec. 43, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 43, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Agreement, 30-1-201.
Certificated security, 30-8-112.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Person, 30-1-201.
Purchase, 30-1-201.
Securities intermediary, 30-8-112.
Security, 30-8-112.
Security certificate, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-121. Clearing corporation rules.** A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

**History: En. Sec. 31, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Clearing corporation, 30-8-112.

**30-8-122. Creditor's legal process.** (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (4).

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4).

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

**History:** **En. Sec. 32, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-123. Statute of frauds inapplicable.** A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within 1 year of its making.

**History:** **En. Sec. 33, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Action, 30-1-201.
Contract, 30-1-201.
Writing, 30-1-201.

**30-8-124. Evidentiary rules concerning certificated securities.** The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

**History:** **En. Sec. 34, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Action, 30-1-201.
Burden of establishing, 30-1-201.
Indorsement, 30-8-112.
Issuer, 30-8-211.
Presumed, 30-1-201.
Security, 30-8-112.
Security certificate, 30-8-112.

**30-8-125. Securities intermediary and others not liable to adverse claimant.** A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process;

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

**History: En. Sec. 35, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Broker, 30-8-112.
Effective, 30-8-117.
Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security certificate, 30-8-112.

**30-8-126. Securities intermediary as purchaser for value.** A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

**History: En. Sec. 36, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Entitlement order, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

## Part 2
## Issue and Issuer

**30-8-201. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-201; amd. Sec. 17, Ch. 402, L. 1983.**

**30-8-202. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-202; amd. Sec. 18, Ch. 402, L. 1983; amd. Sec. 1, Ch. 80, L. 1985.**

**30-8-203. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-203; amd. Sec. 19, Ch. 402, L. 1983.**

**30-8-204. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-204; amd. Sec. 20, Ch. 402, L. 1983.**

**30-8-205. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-205; amd. Sec. 21, Ch. 402, L. 1983; amd. Sec. 2, Ch. 80, L. 1985.**

**30-8-206. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-206; amd. Sec. 22, Ch. 402, L. 1983.**

**30-8-207. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-207; amd. Sec. 23, Ch. 402, L. 1983; amd. Sec. 3, Ch. 80, L. 1985.**

**30-8-208. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-208; amd. Sec. 24, Ch. 402, L. 1983.**

**30-8-209 and 30-8-210 reserved.**

**30-8-211. Issuer.** (1) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(a) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(d) becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

**History: En. Sec. 37, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Person, 30-1-201.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-212. Issuer's responsibility and defenses — notice of defect or defense.** (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in 30-8-215, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

**History: En. Sec. 38, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Notice, 30-1-201.
Security, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-213. Staleness as notice of defect or defense.** After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by subsection (1) and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

**History:** **En. Sec. 39, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Notice, 30-1-201.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-214. Effect of issuer's restriction on transfer.** A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

**History:** **En. Sec. 40, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Conspicuous, 30-1-201.
Issuer, 30-8-211.
Knowledge, 30-1-201.
Notify, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-215. Effect of unauthorized signature on security certificate.** An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with responsible handling of the security certificate.

**History:** **En. Sec. 41, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security certificate, 30-8-112.
Unauthorized signature, 30-1-201.

**30-8-216. Completion of alteration of security certificate.** (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

**History: En. Sec. 42, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Unauthorized signature, 30-1-201.
Value, 30-1-201, 30-8-126.

**30-8-217. Rights and duties of issuer with respect to registered owners.** (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

**History: En. Sec. 43, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Registered form, 30-8-112.
Security, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-218. Effect of signature of authenticating trustee, registrar, or transfer agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) the certificate is genuine;

(b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility for the validity of the security in other respects.

**History: En. Sec. 44, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Genuine, 30-1-201.
Issuer, 30-8-211.
Notice, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-219. Issuer's lien.** A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

**History: En. Sec. 45, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Security certificate, 30-8-112.

**30-8-220. Overissue.** (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

**History: En. Sec. 46, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Issuer, 30-8-211.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

## Part 3
## Transfer of Certificated and Uncertificated Securities

**30-8-301. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-301; amd. Sec. 25, Ch. 402, L. 1983.**

**30-8-302. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-302, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-302; amd. Sec. 26, Ch. 402, L. 1983.**

**30-8-303. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-303; amd. Sec. 27, Ch. 402, L. 1983.**

**30-8-304. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-304; amd. Sec. 28, Ch. 402, L. 1983.**

**30-8-305. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-305; amd. Sec. 29, Ch. 402, L. 1983.**

**30-8-306. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-306; amd. Sec. 30, Ch. 402, L. 1983.**

**30-8-307. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-307; amd. Sec. 31, Ch. 402, L. 1983.**

**30-8-308. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-308; amd. Sec. 32, Ch. 402, L. 1983.**

**30-8-309. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-309; amd. Sec. 33, Ch. 402, L. 1983; amd. Sec. 4, Ch. 80, L. 1985.**

**30-8-310. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-310; amd. Sec. 34, Ch. 402, L. 1983.**

**30-8-311. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-311; amd. Sec. 35, Ch. 402, L. 1983.**

**30-8-312. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-312; amd. Sec. 36, Ch. 402, L. 1983.**

**30-8-313. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-313; amd. Sec. 37, Ch. 402, L. 1983; amd. Sec. 5, Ch. 80, L. 1985.**

**30-8-314. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-314; amd. Sec. 38, Ch. 402, L. 1983.**

**30-8-315. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-315; amd. Sec. 39, Ch. 402, L. 1983.**

**30-8-316. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-316; amd. Sec. 40, Ch. 402, L. 1983.**

**30-8-317. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-317; amd. Sec. 41, Ch. 402, L. 1983.**

**30-8-318. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-318; amd. Sec. 42, Ch. 402, L. 1983.**

**30-8-319. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-319, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-319; amd. Sec. 43, Ch. 402, L. 1983; amd. Sec. 6, Ch. 80, L. 1985.**

**30-8-320. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 8-320, Ch. 264, L. 1963; amd. Sec. 2, Ch. 278, L. 1977; R.C.M. 1947, 87A-8-320; amd. Sec. 44, Ch. 402, L. 1983.**

**30-8-321. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History: En. Sec. 45, Ch. 402, L. 1983.**

**30-8-322 through 30-8-330 reserved.**

**30-8-331. Delivery.** (1) Delivery of a certificated security to a purchaser occurs when:

(a) the purchaser acquires possession of the security certificate;

(b) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is:

(i) registered in the name of the purchaser;

(ii) payable to the order of the purchaser; or

(iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

**History: En. Sec. 47, Ch. 536, L. 1997; amd. Sec. 146, Ch. 305, L. 1999.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Effective, 30-8-117.
Issuer, 30-8-211.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Security certificate, 30-8-112.
Special endorsement, 30-8-334.
Uncertificated security, 30-8-112.

**30-8-332. Rights of purchaser.** (1) Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

**History: En. Sec. 48, Ch. 536, L. 1997; amd. Sec. 147, Ch. 305, L. 1999.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Delivery, 30-8-331.
Notice of adverse claim, 30-8-115.
Protected purchaser, 30-8-333.
Purchase, 30-1-201, 30-8-126.
Uncertificated security, 30-8-112.

**30-8-333. Protected purchaser.** (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) gives value;

(b) does not have notice of any adverse claim to the security; and

(c) obtains control of the certificated or uncertificated security.

(2) A protected purchaser also acquires its interest in the security free of any adverse claim.

**History: En. Sec. 49, Ch. 536, L. 1997; amd. Sec. 44, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 44, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Certificated security, 30-8-112.
Control, 30-8-116.
Notice of adverse claim, 30-8-115.
Purchaser, 30-1-201, 30-8-126.
Uncertificated security, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-334. Indorsement.** (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in 30-8-118 and not an obligation that the security will be honored by the issuer.

**History: En. Sec. 50, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Indorsement, 30-8-112.
Purchaser, 30-1-201, 30-8-126.
Registered form, 30-8-112.
Security certificate, 30-8-112.

**30-8-335. Instruction.** (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by 30-8-118 and not an obligation that the security will be honored by the issuer.

**History:** **En. Sec. 51, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Appropriate person, 30-8-117.
Instruction, 30-8-112.
Issuer, 30-8-211.

**30-8-336. Effect of guaranteeing signature, indorsement, or instruction.** (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) the signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

**History:** **En. Sec. 52, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Appropriate person, 30-8-117.
Genuine, 30-1-201.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-337. Purchaser's right to requisites for registration of transfer.** Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

**History:** **En. Sec. 53, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Purchaser, 30-1-201, 30-8-126.
Security, 30-8-112.
Value, 30-1-201, 30-8-126.

## Part 4
## Registration

**Part Cross-References**

Registration, Title 30, ch. 10, part 2.

**30-8-401. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-401, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-401; amd. Sec. 46, Ch. 402, L. 1983.**

**30-8-402. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-402, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-402; amd. Sec. 47, Ch. 402, L. 1983.**

**30-8-403. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-403, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-403; amd. Sec. 48, Ch. 402, L. 1983.**

**30-8-404. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-404, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-404; amd. Sec. 49, Ch. 402, L. 1983.**

**30-8-405. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-405, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-405; amd. Sec. 50, Ch. 402, L. 1983; amd. Sec. 7, Ch. 80, L. 1985.**

**30-8-406. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 8-406, Ch. 264, L. 1963; R.C.M. 1947, 87A-8-406; amd. Sec. 51, Ch. 402, L. 1983.**

**30-8-407. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 52, Ch. 402, L. 1983.**

**30-8-408. Repealed.** Sec. 88, Ch. 536, L. 1997.

**History:** **En. Sec. 53, Ch. 402, L. 1983.**

**30-8-409 and 30-8-410 reserved.**

**30-8-411. Duty of issuer to register transfer.** (1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) reasonable assurance is given that the indorsement or instruction is genuine and authorized (30-8-412);

(d) any applicable law relating to the collection of taxes has been complied with;

(e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with 30-8-214;

(f) a demand that the issuer not register transfer has not become effective under 30-8-413, or the issuer has complied with 30-8-413(2) but no legal process or indemnity bond is obtained as provided in 30-8-413(4); and

(g) the transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's

principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

**History: En. Sec. 54, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Appropriate person, 30-8-117.
Certificated security, 30-8-112.
Genuine, 30-1-201.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Protective purchaser, 30-8-333.
Registered form, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-412. Assurance that indorsement or instruction is effective.** (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to 30-8-117(1)(d) or (1)(e), appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

**History: En. Sec. 55, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Appropriate person, 30-8-117.
Genuine, 30-1-201.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.

**30-8-413. Demand that issuer not register transfer.** (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to:

(a) the person who initiated the demand at the address provided in the demand; and

(b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(i) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(ii) a demand that the issuer not register transfer had previously been received; and

(iii) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

**History: En. Sec. 56, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Appropriate person, 30-8-117.
Certificated security, 30-8-112.
Communicate, 30-8-112.
Effective, 30-8-117.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Registered form, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-414. Wrongful registration.** (1) Except as otherwise provided in 30-8-416, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) pursuant to an ineffective indorsement or instruction;

(b) after a demand that the issuer not register transfer became effective under 30-8-413(1) and the issuer did not comply with 30-8-413(2);

(c) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) by an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by 30-8-220.

(3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the

registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

**History:** **En. Sec. 57, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Effective, 30-8-117.
Indorsement, 30-8-112.
Instruction, 30-8-112.
Issuer, 30-8-211.
Security, 30-8-112.
Uncertificated security, 30-8-112.

**30-8-415. Replacement of lost, destroyed, or wrongfully taken security certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by 30-8-220. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

**History:** **En. Sec. 58, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Bearer form, 30-8-112.
Certificated security, 30-8-112.
Issuer, 30-8-211.
Notice, 30-1-201.
Overissue, 30-8-220.
Protected purchaser, 30-8-333.
Registered form,, 30-8-112.
Security certificate, 30-8-112.

**30-8-416. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under 30-8-414 or a claim to a new security certificate under 30-8-415.

**History:** **En. Sec. 59, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Issuer, 30-8-211.
Notify, 30-1-201.
Security certificate, 30-8-112.

**30-8-417. Authenticating trustee, transfer agent, and registrar.** A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

**History:** **En. Sec. 60, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Certificated security, 30-8-112.
Issuer, 30-8-211.
Security, 30-8-112.
Security certificate, 30-8-112.
Uncertificated security, 30-8-112.

## Part 5
## Security Entitlements

**30-8-501. Securities account — acquisition of security entitlement from securities intermediary.** (1) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary:

(a) indicates by book entry that a financial asset has been credited to the person's securities account;

(b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

**History:** **En. Sec. 61, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Financial asset, 30-8-112.
Indorsement, 30-8-112.
Securities intermediary, 30-8-112.
Security, 30-8-112.
Security entitlement, 30-8-112.

**30-8-502. Assertion of adverse claim against entitlement holder.** An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under 30-8-501 for value and without notice of the adverse claim.

**History:** **En. Sec. 62, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Financial asset, 30-8-112.
Notice of adverse claim, 30-8-115.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in 30-8-511.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under 30-8-505 through 30-8-508.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

(a) insolvency proceedings have been initiated by or against the securities intermediary;

(b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) the securities intermediary violated its obligations under 30-8-504 by transferring the financial asset or interest therein to the purchaser; and

(d) the purchaser is not protected under subsection (6).

(5) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(6) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under 30-8-504.

**History: En. Sec. 63, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Control, 30-8-116.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Insolvency proceedings, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-504. Duty of securities intermediary to maintain financial asset.** (1) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

**History: En. Sec. 64, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Clearing corporation, 30-8-112.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

**30-8-505. Duty of securities intermediary with respect to payments and distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

**History: En. Sec. 65, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

**30-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**History: En. Sec. 66, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

**30-8-507. Duty of securities intermediary to comply with entitlement order.** (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

**History: En. Sec. 67, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Appropriate person, 30-8-117.
Effective, 30-8-117.
Entitlement holder, 30-8-112.
Entitlement order, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

**30-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.** A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**History: En. Sec. 68, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.

**30-8-509. Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.** (1) If the substance of a duty imposed upon a securities intermediary by 30-8-504 through 30-8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by 30-8-504 through 30-8-508 is subject to:

(a) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) Sections 30-8-504 through 30-8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

**History: En. Sec. 69, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Agreement, 30-1-201.
Entitlement holder, 30-8-112.
Securities intermediary, 30-8-112.
Security interest, 30-1-201.

**30-8-510. Rights of purchaser of security entitlement from entitlement holder.** (1) In an action not covered by the priority rules in chapter 9A or the rules stated in subsection (3), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under 30-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9A, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4), purchasers who have control rank according to the priority in time of:

(a) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained if the purchaser obtained control under 30-8-116(4)(a);

(b) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried if the purchaser obtained control under 30-8-116(4)(b); or

(c) if the purchaser obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection (3) if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

**History:** **En. Sec. 70, Ch. 536, L. 1997; amd. Sec. 148, Ch. 305, L. 1999.**

**Cross-References**

DEFINITIONAL

Adverse claim, 30-8-112.
Control, 30-8-116.
Entitlement holder, 30-8-112.
Notice of adverse claim, 30-8-115.
Purchase, 30-1-201.
Purchaser, 30-1-201, 30-8-126.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Value, 30-1-201, 30-8-126.

**30-8-511. Priority among security interests and entitlement holders.** (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

**History:** **En. Sec. 71, Ch. 536, L. 1997.**

**Cross-References**

DEFINITIONAL

Clearing corporation, 30-8-112.
Control, 30-8-116.
Entitlement holder, 30-8-112.
Financial asset, 30-8-112.
Securities intermediary, 30-8-112.
Security entitlement, 30-8-112.
Security interest, 30-1-201.
Value, 30-1-201, 30-8-126.

# CHAPTER 9
# UNIFORM COMMERCIAL CODE
# SECURED TRANSACTIONS
# (Renumbered and Repealed)

Part 1 — General Provisions (Renumbered and Repealed)

Part 2 — Effectiveness of Security Agreement — Attachment of Security Interest — Rights of Parties to Security Agreement (Renumbered and Repealed)

Part 3 — Perfection and Priority (Renumbered and Repealed)

Part 4 — Rights of Third Parties (Renumbered and Repealed)

Part 5 — Filing (Renumbered and Repealed)

Part 6 — Default (Renumbered)

## Part 1
## General Provisions
## (Renumbered and Repealed)

**30-9-101. Renumbered 30-9A-101.** Code Commissioner, 2001.

**30-9-102. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-102, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-102; amd. Sec. 54, Ch. 402, L. 1983.**

**30-9-103. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-103, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-103; amd. Sec. 55, Ch. 402, L. 1983; amd. Sec. 72, Ch. 536, L. 1997.**

**30-9-104. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-104, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-104; amd. Sec. 56, Ch. 402, L. 1983; amd. Sec. 40, Ch. 530, L. 1995; amd. Sec. 73, Ch. 536, L. 1997.**

**30-9-105. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-105, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-105; amd. Sec. 3, Ch. 137, L. 1979; amd. Sec. 57, Ch. 402, L. 1983; amd. Sec. 74, Ch. 536, L. 1997.**

**30-9-106. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-106, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-106; amd. Sec. 58, Ch. 402, L. 1983; amd. Sec. 75, Ch. 536, L. 1997.**

**30-9-107. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-107, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-107.**

**30-9-108. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-108, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-108.**

**30-9-109. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-109, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-109; amd. Sec. 1, Ch. 326, L. 1989.**

**30-9-110. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-110, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-110.**

**30-9-111. Repealed.** Sec. 230, Ch. 410, L. 1991.
**History: En. Sec. 9-111, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-111.**

**30-9-112. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-112, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-112.**

**30-9-113. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-113, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-113; amd. Sec. 228, Ch. 410, L. 1991.**

**30-9-114. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 59, Ch. 402, L. 1983.**

**30-9-115. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 76, Ch. 536, L. 1997.**

**30-9-116. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 77, Ch. 536, L. 1997.**

**30-9-117 through 30-9-121 reserved.**

**30-9-122. Renumbered 30-9A-102.** Code Commissioner, 2001.

**30-9-123. Renumbered 30-9A-103.** Code Commissioner, 2001.

**30-9-124. Renumbered 30-9A-104.** Code Commissioner, 2001.

**30-9-125. Renumbered 30-9A-105.** Code Commissioner, 2001.

**30-9-126. Renumbered 30-9A-106.** Code Commissioner, 2001.

**30-9-127. Renumbered 30-9A-107.** Code Commissioner, 2001.

**30-9-128. Renumbered 30-9A-108.** Code Commissioner, 2001.

**30-9-129. Renumbered 30-9A-109.** Code Commissioner, 2001.

**30-9-130. Renumbered 30-9A-110.** Code Commissioner, 2001.

## Part 2
## Effectiveness of Security Agreement — Attachment of Security Interest — Rights of Parties to Security Agreement (Renumbered and Repealed)

**30-9-201. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-201, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-201.**

**30-9-202. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-202, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-202.**

**30-9-203. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-203, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-203; amd. Sec. 60, Ch. 402, L. 1983; amd. Sec. 2, Ch. 164, L. 1989; amd. Sec. 2, Ch. 165, L. 1989; amd. Sec. 78, Ch. 536, L. 1997.**

**30-9-204. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-204, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-204; amd. Sec. 61, Ch. 402, L. 1983.**

**30-9-205. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-205, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-205; amd. Sec. 62, Ch. 402, L. 1983.**

**30-9-206. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-206, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-206.**

**30-9-207. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-207, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-207.**

**30-9-208. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-208, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-208.**

**30-9-209 and 30-9-210 reserved.**

**30-9-211. Renumbered 30-9A-201.** Code Commissioner, 2001.

**30-9-212. Renumbered 30-9A-202.** Code Commissioner, 2001.

**30-9-213. Renumbered 30-9A-203.** Code Commissioner, 2001.

**30-9-214. Renumbered 30-9A-204.** Code Commissioner, 2001.

**30-9-215. Renumbered 30-9A-205.** Code Commissioner, 2001.

**30-9-216. Renumbered 30-9A-206.** Code Commissioner, 2001.

**30-9-217. Renumbered 30-9A-207.** Code Commissioner, 2001.

**30-9-218. Renumbered 30-9A-208.** Code Commissioner, 2001.

**30-9-219. Renumbered 30-9A-209.** Code Commissioner, 2001.

**30-9-220. Renumbered 30-9A-210.** Code Commissioner, 2001.

## Part 3
## Perfection and Priority
## (Renumbered and Repealed)

**30-9-301. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-301, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-301; amd. Sec. 1, Ch. 406, L. 1979; amd. Sec. 63, Ch. 402, L. 1983; amd. Sec. 1, Ch. 167, L. 1985; amd. Sec. 79, Ch. 536, L. 1997.

**30-9-302. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-302, Ch. 264, L. 1963; amd. Sec. 13, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302; amd. Sec. 64, Ch. 402, L. 1983; amd. Sec. 80, Ch. 536, L. 1997.

**30-9-303. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-303, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-303; amd. Sec. 81, Ch. 536, L. 1997.

**30-9-304. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-304, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-304; amd. Sec. 65, Ch. 402, L. 1983; amd. Sec. 82, Ch. 536, L. 1997.

**30-9-305. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-305, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-305; amd. Sec. 66, Ch. 402, L. 1983; amd. Sec. 83, Ch. 536, L. 1997.

**30-9-306. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-306, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-306; amd. Sec. 67, Ch. 402, L. 1983; amd. Sec. 84, Ch. 536, L. 1997.

**30-9-307. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-307, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-307.

**30-9-308. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-308, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-308; amd. Sec. 68, Ch. 402, L. 1983.

**30-9-309. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-309, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-309; amd. Sec. 69, Ch. 402, L. 1983; amd. Sec. 85, Ch. 536, L. 1997.

**30-9-310. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-310, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-310.

**30-9-311. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-311, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-311.

**30-9-312. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-312, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-312; amd. Sec. 2, Ch. 406, L. 1979; amd. Sec. 70, Ch. 402, L. 1983; amd. Sec. 8, Ch. 80, L. 1985; amd. Sec. 2, Ch. 167, L. 1985; amd. Sec. 86, Ch. 536, L. 1997.

**30-9-313. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-313, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-313; amd. Sec. 71, Ch. 402, L. 1983.

**30-9-314. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-314, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-314.

**30-9-315. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-315, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-315.

**30-9-316. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-316, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-316.

**30-9-317. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-317, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-317.

**30-9-318. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History:** En. Sec. 9-318, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-318; amd. Sec. 72, Ch. 402, L. 1983; amd. Sec. 9, Ch. 80, L. 1985.

**30-9-319 and 30-9-320 reserved.**

**30-9-321. Renumbered 30-9A-301.** Code Commissioner, 2001.

**30-9-322. Renumbered 30-9A-302.** Code Commissioner, 2001.

**30-9-323. Renumbered 30-9A-303.** Code Commissioner, 2001.

**30-9-324. Renumbered 30-9A-304.** Code Commissioner, 2001.

**30-9-325. Renumbered 30-9A-305.** Code Commissioner, 2001.

**30-9-326. Renumbered 30-9A-306.** Code Commissioner, 2001.

**30-9-327. Renumbered 30-9A-307.** Code Commissioner, 2001.

**30-9-328. Renumbered 30-9A-308.** Code Commissioner, 2001.

**30-9-329. Renumbered 30-9A-309.** Code Commissioner, 2001.

**30-9-330. Renumbered 30-9A-310.** Code Commissioner, 2001.

**30-9-331. Renumbered 30-9A-311.** Code Commissioner, 2001.

**30-9-332. Renumbered 30-9A-312.** Code Commissioner, 2001.

**30-9-333. Renumbered 30-9A-313.** Code Commissioner, 2001.

**30-9-334. Renumbered 30-9A-314.** Code Commissioner, 2001.

**30-9-335. Renumbered 30-9A-315.** Code Commissioner, 2001.

**30-9-336. Renumbered 30-9A-316.** Code Commissioner, 2001.

**30-9-337. Renumbered 30-9A-317.** Code Commissioner, 2001.

**30-9-338. Renumbered 30-9A-318.** Code Commissioner, 2001.

**30-9-339. Renumbered 30-9A-319.** Code Commissioner, 2001.

**30-9-340. Renumbered 30-9A-320.** Code Commissioner, 2001.

**30-9-341. Renumbered 30-9A-321.** Code Commissioner, 2001.

**30-9-342. Renumbered 30-9A-322.** Code Commissioner, 2001.

**30-9-343. Renumbered 30-9A-323.** Code Commissioner, 2001.

**30-9-344. Renumbered 30-9A-324.** Code Commissioner, 2001.

**30-9-345. Renumbered 30-9A-325.** Code Commissioner, 2001.

**30-9-346. Renumbered 30-9A-326.** Code Commissioner, 2001.

**30-9-347. Renumbered 30-9A-327.** Code Commissioner, 2001.

**30-9-348. Renumbered 30-9A-328.** Code Commissioner, 2001.

**30-9-349. Renumbered 30-9A-329.** Code Commissioner, 2001.

**30-9-350. Renumbered 30-9A-330.** Code Commissioner, 2001.

**30-9-351. Renumbered 30-9A-331.** Code Commissioner, 2001.

**30-9-352. Renumbered 30-9A-332.** Code Commissioner, 2001.

**30-9-353. Renumbered 30-9A-333.** Code Commissioner, 2001.

**30-9-354. Renumbered 30-9A-334.** Code Commissioner, 2001.

**30-9-355. Renumbered 30-9A-335.** Code Commissioner, 2001.

**30-9-356. Renumbered 30-9A-336.** Code Commissioner, 2001.

**30-9-357. Renumbered 30-9A-337.** Code Commissioner, 2001.

**30-9-358. Renumbered 30-9A-338.** Code Commissioner, 2001.

**30-9-359. Renumbered 30-9A-339.** Code Commissioner, 2001.

**30-9-360. Renumbered 30-9A-340.** Code Commissioner, 2001.

**30-9-361. Renumbered 30-9A-341.** Code Commissioner, 2001.

**30-9-362. Renumbered 30-9A-342.** Code Commissioner, 2001.

## Part 4
## Rights of Third Parties
## (Renumbered and Repealed)

**30-9-401. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-401, Ch. 264, L. 1963; amd. Sec. 15, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-401; amd. Sec. 73, Ch. 402, L. 1983; amd. Sec. 1, Ch. 683, L. 1985.**

**30-9-402. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967; R.C.M. 1947, 87A-9-402; amd. Sec. 74, Ch. 402, L. 1983; amd. Sec. 1, Ch. 619, L. 1987; amd. Sec. 1, Ch. 304, L. 1989; amd. Sec. 2, Ch. 326, L. 1989; amd. Sec. 1, Ch. 335, L. 1993.**

**30-9-403. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-403; amd. Sec. 75, Ch. 402, L. 1983; amd. Sec. 2, Ch. 119, L. 1985; amd. Sec. 2, Ch. 683, L. 1985; amd. Sec. 2, Ch. 619, L. 1987; amd. Sec. 2, Ch. 185, L. 1989; amd. Sec. 1, Ch. 273, L. 1989; amd. Sec. 3, Ch. 351, L. 1989; amd. Sec. 3, Ch. 411, L. 1993; amd. Sec. 19, Ch. 420, L. 1993; amd. Sec. 1, Ch. 290, L. 1997.**

**30-9-404. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-404; amd. Sec. 76, Ch. 402, L. 1983; amd. Sec. 3, Ch. 185, L. 1989.**

**30-9-405. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971; amd. Sec. 16, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-405; amd. Sec. 77, Ch. 402, L. 1983.**

**30-9-406. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971; amd. Sec. 17, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-406; amd. Sec. 78, Ch. 402, L. 1983.**

**30-9-407. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971; R.C.M. 1947, 87A-9-407; amd. Sec. 79, Ch. 402, L. 1983; amd. Sec. 3, Ch. 683, L. 1985; amd. Sec. 3, Ch. 619, L. 1987; amd. Sec. 2, Ch. 335, L. 1993; amd. Sec. 20, Ch. 420, L. 1993.**

**30-9-408. Repealed.** Sec. 85, Ch. 402, L. 1983.

**History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967; R.C.M. 1947, 87A-9-302.1(a).**

**30-9-409. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967; amd. Sec. 14, Ch. 265, L. 1977; R.C.M. 1947, 87A-9-302.2.**

**30-9-410. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 3, Ch. 76, L. 1965; R.C.M. 1947, 87A-9-302.3; amd. Sec. 1, Ch. 101, L. 1985.**

**30-9-411. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. 59-516.1 by Sec. 11-144, Ch. 264, L. 1963; R.C.M. 1947, 59-516.1.**

**30-9-412. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 80, Ch. 402, L. 1983.**

**30-9-413 through 30-9-420 reserved.**

**30-9-421. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 4, Ch. 683, L. 1985; amd. Sec. 4, Ch. 619, L. 1987.**

**30-9-422. Repealed.** Sec. 5, Ch. 619, L. 1987.

**History: En. Sec. 5, Ch. 683, L. 1985.**

**30-9-423. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 7, Ch. 683, L. 1985.**

**30-9-424 through 30-9-430 reserved.**

**30-9-431. Repealed.** Sec. 168, Ch. 305, L. 1999.

**History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 2, Ch. 290, L. 1997.**

**30-9-432. Renumbered 30-9A-420.** Code Commissioner, 2001.

**30-9-433 through 30-9-440 reserved.**

**30-9-441. Renumbered 30-9A-401.** Code Commissioner, 2001.

**30-9-442. Renumbered 30-9A-402.** Code Commissioner, 2001.

**30-9-443. Renumbered 30-9A-403.** Code Commissioner, 2001.

**30-9-444. Renumbered 30-9A-404.** Code Commissioner, 2001.

**30-9-445. Renumbered 30-9A-405.** Code Commissioner, 2001.

**30-9-446. Renumbered 30-9A-406.** Code Commissioner, 2001.

**30-9-447. Renumbered 30-9A-407.** Code Commissioner, 2001.

**30-9-448. Renumbered 30-9A-408.** Code Commissioner, 2001.

**30-9-449. Renumbered 30-9A-409.** Code Commissioner, 2001.

## Part 5
## Filing
## (Renumbered and Repealed)

**30-9-501. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-501, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-501; amd. Sec. 81, Ch. 402, L. 1983.**

**30-9-502. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-502, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-502; amd. Sec. 82, Ch. 402, L. 1983.**

**30-9-503. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-503, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-503.**

**30-9-504. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-504, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-504; amd. Sec. 83, Ch. 402, L. 1983; amd. Sec. 1, Ch. 3, L. 1987.**

**30-9-505. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-505, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-505; amd. Sec. 84, Ch. 402, L. 1983; amd. Sec. 2, Ch. 3, L. 1987.**

**30-9-506. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-506, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-506.**

**30-9-507. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 9-507, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-507.**

**30-9-508. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R.C.M. 1921; re-en. Sec. 8286, R.C.M. 1935; amd. Sec. 11-135, Ch. 264, L. 1963; R.C.M. 1947, 52-312; amd. Sec. 1, Ch. 189, L. 1979.**

**30-9-509. Repealed.** Sec. 3, Ch. 189, L. 1979.
**History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R.C.M. 1921; re-en. Sec. 8287, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963; R.C.M. 1947, 52-313.**

**30-9-510. Repealed.** Sec. 3, Ch. 189, L. 1979.
**History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R.C.M. 1921; re-en. Sec. 8288, R.C.M. 1935; amd. Sec. 11-137, Ch. 264, L. 1963; R.C.M. 1947, 52-314.**

**30-9-511. Repealed.** Sec. 168, Ch. 305, L. 1999.
**History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).**

**30-9-512 through 30-9-520 reserved.**

**30-9-521. Renumbered 30-9A-501.** Code Commissioner, 2001.

**30-9-522. Renumbered 30-9A-502.** Code Commissioner, 2001.

**30-9-523. Renumbered 30-9A-503.** Code Commissioner, 2001.

**30-9-524. Renumbered 30-9A-504.** Code Commissioner, 2001.

**30-9-525. Renumbered 30-9A-505.** Code Commissioner, 2001.

**30-9-526. Renumbered 30-9A-506.** Code Commissioner, 2001.

**30-9-527. Renumbered 30-9A-507.** Code Commissioner, 2001.

**30-9-528. Renumbered 30-9A-508.** Code Commissioner, 2001.

**30-9-529. Renumbered 30-9A-509.** Code Commissioner, 2001.

**30-9-530. Renumbered 30-9A-510.** Code Commissioner, 2001.

**30-9-531. Renumbered 30-9A-511.** Code Commissioner, 2001.

**30-9-532. Renumbered 30-9A-512.** Code Commissioner, 2001.

**30-9-533. Renumbered 30-9A-513.** Code Commissioner, 2001.

**30-9-534. Renumbered 30-9A-514.** Code Commissioner, 2001.

**30-9-535. Renumbered 30-9A-515.** Code Commissioner, 2001.

**30-9-536. Renumbered 30-9A-516.** Code Commissioner, 2001.

**30-9-537. Renumbered 30-9A-517.** Code Commissioner, 2001.

**30-9-538. Renumbered 30-9A-518.** Code Commissioner, 2001.

**30-9-539. Renumbered 30-9A-519.** Code Commissioner, 2001.

**30-9-540. Renumbered 30-9A-520.** Code Commissioner, 2001.

**30-9-541. Renumbered 30-9A-521.** Code Commissioner, 2001.

**30-9-542. Renumbered 30-9A-522.** Code Commissioner, 2001.

**30-9-543. Renumbered 30-9A-523.** Code Commissioner, 2001.

**30-9-544. Renumbered 30-9A-524.** Code Commissioner, 2001.

**30-9-545. Renumbered 30-9A-525.** Code Commissioner, 2001.

**30-9-546. Renumbered 30-9A-526.** Code Commissioner, 2001.

**30-9-547. Renumbered 30-9A-527.** Code Commissioner, 2001.

## Part 6
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## (Renumbered)

**30-9-601. Renumbered 30-9A-601.** Code Commissioner, 2001.

**30-9-602. Renumbered 30-9A-602.** Code Commissioner, 2001.

**30-9-603. Renumbered 30-9A-603.** Code Commissioner, 2001.

**30-9-604. Renumbered 30-9A-604.** Code Commissioner, 2001.

**30-9-605. Renumbered 30-9A-605.** Code Commissioner, 2001.

**30-9-606. Renumbered 30-9A-606.** Code Commissioner, 2001.

**30-9-607. Renumbered 30-9A-607.** Code Commissioner, 2001.

**30-9-608. Renumbered 30-9A-608.** Code Commissioner, 2001.

**30-9-609. Renumbered 30-9A-609.** Code Commissioner, 2001.

**30-9-610. Renumbered 30-9A-610.** Code Commissioner, 2001.

**30-9-611. Renumbered 30-9A-611.** Code Commissioner, 2001.

**30-9-612. Renumbered 30-9A-612.** Code Commissioner, 2001.

**30-9-613. Renumbered 30-9A-613.** Code Commissioner, 2001.

**30-9-614. Renumbered 30-9A-614.** Code Commissioner, 2001.

**30-9-615. Renumbered 30-9A-615.** Code Commissioner, 2001.

**30-9-616. Renumbered 30-9A-616.** Code Commissioner, 2001.

**30-9-617. Renumbered 30-9A-617.** Code Commissioner, 2001.

**30-9-618. Renumbered 30-9A-618.** Code Commissioner, 2001.

**30-9-619. Renumbered 30-9A-619.** Code Commissioner, 2001.

**30-9-620. Renumbered 30-9A-620.** Code Commissioner, 2001.

**30-9-621. Renumbered 30-9A-621.** Code Commissioner, 2001.

**30-9-622. Renumbered 30-9A-622.** Code Commissioner, 2001.

**30-9-623. Renumbered 30-9A-623.** Code Commissioner, 2001.

**30-9-624. Renumbered 30-9A-624.** Code Commissioner, 2001.

**30-9-625. Renumbered 30-9A-625.** Code Commissioner, 2001.

**30-9-626. Renumbered 30-9A-626.** Code Commissioner, 2001.

**30-9-627. Renumbered 30-9A-627.** Code Commissioner, 2001.

**30-9-628. Renumbered 30-9A-628.** Code Commissioner, 2001.

## CHAPTER 9A

## UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS

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**Part 4 — Rights of Third Parties**

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# Part 1
# General Provisions

**30-9A-101. Short title.** This chapter shall be known and may be cited as Uniform Commercial Code—Secured Transactions.

**History: En. Sec. 9-101, Ch. 264, L. 1963; R.C.M. 1947, 87A-9-101; Sec. 30-9-101, MCA 1999; redes. 30-9A-101 by Code Commissioner, 2001.**

**30-9A-102. Definitions and index of definitions.** (1) As used in this chapter, the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) "Account", except as used in "account for", "account statement", "account to", "commodity account" in subsection (1)(o), "customer's account", "deposit account" in subsection (1)(ff), "on account of", and "statement of account", means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to be rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to be incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a controllable account and a health-care-insurance receivable.

(iii) The term does not include:

(A) chattel paper;

(B) a commercial tort claim;

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right;

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card; or

(G) rights to payment evidenced by an instrument.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the negotiable instrument evidences chattel paper.

(d) "Accounting", except as used in "accounting for", means a record:

(i) signed by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) (i) "Assignee", except as used in "assignee for benefit of creditors", means a person:

(A) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding; or

(B) to which an account, chattel paper, payment intangible, or promissory note has been sold.

(ii) The term includes a person to which a security interest has been transferred by a secured party.

(h) (i) "Assignor" means a person that:

(A) under a security agreement creates or provides for a security interest that secures an obligation; or

(B) sells an account, chattel paper, payment intangible, or promissory note.

(ii) The term includes a secured party that has transferred a security interest to another person.

(i) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(j) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(k) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(l) (i) "Chattel paper" means:

(A) a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(I) the right to payment and lease agreement are evidenced by a record; and

(II) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

(ii) The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(m) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) proceeds to which a security interest attaches under 30-9A-315;

(ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(iii) goods that are the subject of a consignment.

(n) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in the course of the claimant's business or profession; and

(B) does not include damages arising out of personal injury to or the death of an individual.

(o) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(p) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(q) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(r) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

(ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(s) "Communicate" means:

(i) to send a written or other tangible record;

(ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(t) "Consignee" means a merchant to which goods are delivered in a consignment.

(u) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) the merchant:

(A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(v) "Consignor" means a person that delivers goods to a consignee in a consignment.

(w) "Consumer debtor" means a debtor in a consumer transaction.

(x) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(y) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(z) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(aa) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(bb) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(cc) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under 30-12A-105 of the controllable electronic record.

(dd) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under 30-12A-105 of the controllable electronic record.

(ee) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(ff) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(gg) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(hh) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(ii) "Equipment" means goods other than inventory, farm products, or consumer goods.

(jj) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(kk) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(ll) "File number" means the number assigned to an initial financing statement pursuant to 30-9A-519(1).

(mm) "Filing office" means an office designated in 30-9A-501 as the place to file a financing statement.

(nn) "Filing-office rule" means a rule adopted pursuant to 30-9A-526.

(oo) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(pp) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9A-502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(qq) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(rr) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

(ss) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(tt) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(uu) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(vv) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(ww) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit;

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card; or

(D) a writing that evidences chattel paper.

(xx) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(yy) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(zz) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(aaa) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(bbb) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(ccc) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(ddd) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(eee) "Money" has the meaning in 30-1-201(2)(y), but does not include a deposit account.

(fff) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ggg) "New debtor" means a person that becomes bound as debtor under 30-9A-203(4) by a security agreement previously entered into by another person.

(hhh) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(iii) "Noncash proceeds" means proceeds other than cash proceeds.

(jjj) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(kkk) "Original debtor", except as used in 30-9A-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9A-203(4).

(lll) (i) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(ii) The term includes a controllable payment intangible.

(mmm) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(nnn) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(nnn)(i);

(iv) the spouse of an individual described in subsection (1)(nnn)(i), (1)(nnn)(ii), or (1)(nnn)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsection (1)(nnn)(i), (1)(nnn)(ii), (1)(nnn)(iii), or (1)(nnn)(iv) and shares the same home with the individual.

(ooo) "Proceeds", except as used in 30-9A-609(2), means the following property:

(i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(ppp) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(qqq) "Proposal" means a record signed by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9A-620 through 30-9A-622.

(rrr) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(sss) "Public organic record" means a record that is available to the public for inspection and is:

(i) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(ii) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(iii) a record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(ttt) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(uuu) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(vvv) "Registered organization" means an organization formed or organized solely under the law of one state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(www) "Secondary obligor" means an obligor to the extent that:

(i) the obligor's obligation is secondary; or

(ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(xxx) "Secured party" means:

(i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) a person that holds an agricultural lien;

(iii) a consignor;

(iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

(yyy) "Security agreement" means an agreement that creates or provides for a security interest.

(zzz) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

(aaaa) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(bbbb) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(cccc) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(dddd) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant". 30-5-122.
"Beneficiary". 30-5-122.
"Broker". 30-8-112.
"Certificated security". 30-8-112.
"Check". 30-3-104.
"Clearing corporation". 30-8-112.
"Contract for sale". 30-2-106.
"Control" (with respect to a document of title). 30-7-107.
"Controllable electronic record". 30-12A-102.

"Customer". 30-4-104.
"Entitlement holder". 30-8-112.
"Financial asset". 30-8-112.
"Holder in due course". 30-3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right). 30-5-122.
"Issuer" (with respect to a security). 30-8-211.
"Lease". 30-2A-103.
"Lease agreement". 30-2A-103.
"Lease contract". 30-2A-103.
"Leasehold interest". 30-2A-103.
"Lessee". 30-2A-103.
"Lessee in ordinary course of business". 30-2A-103.
"Lessor". 30-2A-103.
"Lessor's residual interest". 30-2A-103.
"Letter of credit". 30-5-122.
"Merchant". 30-2-104.
"Negotiable instrument". 30-3-104.
"Nominated person". 30-5-122.
"Note". 30-3-104.
"Proceeds of a letter of credit". 30-5-134.
"Protected purchaser". 30-8-333.
"Prove". 30-3-102.
"Qualifying purchaser". 30-12A-102.
"Sale". 30-2-106.
"Securities account". 30-8-501.
"Securities intermediary". 30-8-112.
"Security". 30-8-112.
"Security certificate". 30-8-112.
"Security entitlement". 30-8-112.
"Uncertificated security". 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History: En. Sec. 1, Ch. 305, L. 1999; amd. Sec. 3, Ch. 179, L. 2001; Sec. 30-9-122, MCA 1999; redes. 30-9A-102 by Code Commissioner, 2001; amd. Sec. 74, Ch. 575, L. 2005; amd. Sec. 2, Ch. 75, L. 2013; amd. Sec. 45, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 45, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-103. Purchase-money security interest — application of payments — burden of establishing purchase-money security interest.** (1) In this section:

(a) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(b) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(2) A security interest in goods is a purchase-money security interest:

(a) to the extent that the goods are purchase-money collateral with respect to that security interest;

(b) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(c) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(3) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(a) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(b) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(a) in accordance with any reasonable method of application to which the parties agree;

(b) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(c) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(i) to obligations that are not secured; and

(ii) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(6) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(8) The limitation of the rules in subsections (5), (6), and (7) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

**History: En. Sec. 2, Ch. 305, L. 1999; Sec. 30-9-123, MCA 1999; redes. 30-9A-103 by Code Commissioner, 2001.**

**30-9A-104. Control of deposit account.** (1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor;

(c) the secured party becomes the bank's customer with respect to the deposit account; or

(d) another person, other than the debtor:

(i) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(ii) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(2) A secured party that has satisfied the requirements of subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

**History: En. Sec. 3, Ch. 305, L. 1999; amd. Sec. 4, Ch. 179, L. 2001; Sec. 30-9-124, MCA 1999; redes. 30-9A-104 by Code Commissioner, 2001; amd. Sec. 46, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 46, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-105. Control of electronic copy of record evidencing chattel paper.** (1) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.

(2) A system satisfies subsection (1) if the record or records evidencing the chattel paper are created, stored, and assigned in a manner that:

(a) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in subsections (2)(d), (2)(e), and (2)(f), unalterable;

(b) the authoritative copy identifies the purchaser as the assignee of the record or records;

(c) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(d) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(3) A system satisfies subsection (1), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(a) enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(b) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(c) gives the purchaser exclusive power, subject to subsection (4), to:

(i) prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(ii) transfer control of the authoritative electronic copy.

(4) Subject to subsection (5), a power is exclusive under subsections (3)(c)(i) and (3)(c)(ii) even if:

(a) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(b) the power is shared with another person.

(5) A power of a purchaser is not shared with another person under subsection (4)(b) and the purchaser's power is not exclusive if:

(a) the purchaser can exercise the power only if the power also is exercised by the other person; and

(b) the other person:

(i) can exercise the power without exercise of the power by the purchaser; or

(ii) is the transferor to the purchaser of an interest in the chattel paper.

(6) If a purchaser has the powers specified in subsections (3)(c)(i) and (3)(c)(ii), the powers are presumed to be exclusive.

(7) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(a) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(b) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

**History: En. Sec. 4, Ch. 305, L. 1999; Sec. 30-9-125, MCA 1999; redes. 30-9A-105 by Code Commissioner, 2001; amd. Sec. 3, Ch. 75, L. 2013; amd. Sec. 47, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 47, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-106. Control of investment property.** (1) A person has control of a certificated security, or security entitlement as provided in 30-8-116.

(2) A secured party has control of a commodity contract if:

(a) the secured party is the commodity intermediary with which the commodity contract is carried; or

(b) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

**History:** En. Sec. 5, Ch. 305, L. 1999; Sec. 30-9-126, MCA 1999; redes. 30-9A-106 by Code Commissioner, 2001.

**30-9A-107. Control of letter-of-credit right.** A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer of any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under 30-5-134(3) or otherwise applicable law or practice.

**History:** En. Sec. 6, Ch. 305, L. 1999; Sec. 30-9-127, MCA 1999; redes. 30-9A-107 by Code Commissioner, 2001.

**30-9A-107A. Control of controllable electronic record, controllable account, or controllable payment intangible.** (1) A secured party has control of a controllable electronic record as provided in 30-12A-105.

(2) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

**History:** En. Sec. 48, Ch. 200, L. 2025.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-107B. No requirement to acknowledge or confirm — no duties.** (1) A person that has control under 30-9A-104 or 30-9A-105 is not required to acknowledge that it has control on behalf of another person.

(2) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**History:** En. Sec. 49, Ch. 200, L. 2025.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-108. Sufficiency of description.** (1) Except as otherwise provided in subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(a) specific listing;

(b) category;

(c) except as otherwise provided in subsection (5), a type of collateral defined in chapters 1 through 9A;

(d) quantity;

(e) computational or allocational formula or procedure; or

(f) except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(4) Except as otherwise provided in subsection (5), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(a) the collateral by those terms or as investment property; or

(b) the underlying financial asset or commodity contract.

(5) A description only by type of collateral defined in chapters 1 through 9A is an insufficient description of:

(a) a commercial tort claim; or

(b) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

**History: En. Sec. 7, Ch. 305, L. 1999; Sec. 30-9-128, MCA 1999; redes. 30-9A-108 by Code Commissioner, 2001.**

**30-9A-109. Scope.** (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9A-110; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9A-333 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9A-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9A-404 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents under the interest in real property, except to the extent that provision is made for:

(i) liens on real property in 30-9A-203 and 30-9A-308;
(ii) fixtures in 30-9A-334;
(iii) fixture filings in 30-9A-501, 30-9A-502, 30-9A-512, 30-9A-516, and 30-9A-519; and
(iv) security agreements covering personal and real property in 30-9A-604;

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds;

(m) a transfer by a government or governmental subdivision or agency;

(n) an assignment of a deposit account in a consumer transaction, except that 30-9A-315 and 30-9A-322 apply with respect to proceeds and priorities in proceeds; or

(o) an assignment of payments made to or on behalf of claimants pursuant to Title 39, chapter 51, 71, or 73.

**History:** **En. Sec. 8, Ch. 305, L. 1999; amd. Sec. 5, Ch. 179, L. 2001; amd. Sec. 2, Ch. 214, L. 2001; Sec. 30-9-129, MCA 1999; redes. 30-9A-109 by Code Commissioner, 2001; amd. Sec. 7, Ch. 416, L. 2005.**

**30-9A-110. Security interests arising under chapter 2 or 2A.** A security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5) is subject to this chapter. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if the requirements of 30-9A-203(2)(c) have not been met;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party on default by the debtor are governed by chapter 2 or 2A, as applicable; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

**History:** **En. Sec. 9, Ch. 305, L. 1999; Sec. 30-9-130, MCA 1999; redes. 30-9A-110 by Code Commissioner, 2001.**

## Part 2

## Effectiveness of Security Agreement — Attachment of Security Interest — Rights of Parties to Security Agreement

**30-9A-201. General effectiveness of security agreement.** (1) Except as otherwise provided in chapters 1 through 9A, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(2) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers, to Title 30, chapter 14, part 1, and to Title 31, chapter 1.

(3) In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection (2), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (2) has only the effect that the statute or regulation specifies.

(4) This chapter does not:

(a) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (2); or

(b) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

**History:** **En. Sec. 10, Ch. 305, L. 1999; Sec. 30-9-211, MCA 1999; redes. 30-9A-201 by Code Commissioner, 2001.**

**30-9A-202. Title to collateral immaterial.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights, obligations, and remedies apply whether title to collateral is in the secured party or the debtor.

**History:** **En. Sec. 11, Ch. 305, L. 1999; Sec. 30-9-212, MCA 1999; redes. 30-9A-202 by Code Commissioner, 2001.**

**30-9A-203. Attachment and enforcement of security interest — proceeds — supporting obligations — formal requisites.** (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) value has been given;

(b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) one of the following conditions is met:

(i) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(ii) the collateral is not a certificated security and is in the possession of the secured party under 30-9A-313 pursuant to the debtor's security agreement;

(iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement;

(iv) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, investment property, or letter-of-credit rights, and the secured party has control under 30-7-107, 30-9A-104, 30-9A-106, 30-9A-107, or 30-9A-107A pursuant to the debtor's security agreement; or

(v) the collateral is chattel paper and the secured party has possession and control under 30-9A-314A pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, 30-5-118 on the security interest of a letter-of-credit issuer or nominated person, 30-9A-110 on a security interest arising under chapter 2 or 2A, and 30-9A-206 on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(a) the security agreement becomes effective to create a security interest in the person's property; or

(b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(b) another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 30-9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

**History: En. Sec. 12, Ch. 305, L. 1999; Sec. 30-9-213, MCA 1999; redes. 30-9A-203 by Code Commissioner, 2001; amd. Sec. 75, Ch. 575, L. 2005; amd. Sec. 50, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment — Code Commissioner Correction:* See 2025 Session Law for amendment made by sec. 50, Ch. 200, L. 2025. Amendment effective October 1, 2025.

In (2)(v) the Code Commissioner changed the reference to section 66, which amended 30-9A-316, to section 65, which enacted 30-9A-314A, to correct an erroneous reference.

**30-9A-204. After acquired property — future advances.** (1) Except as otherwise provided in subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

(2) (a) Subject to subsection (2)(b), a security interest does not attach under a term constituting an after-acquired property clause to:

(i) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(ii) a commercial tort claim.

(b) Subsection (2)(a) does not prevent a security interest from attaching:

(i) to consumer goods as proceeds under 30-9A-315(1) or commingled goods under 30-9A-336(3);

(ii) to a commercial tort claim as proceeds under 30-9A-315(1); or

(iii) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

**History: En. Sec. 13, Ch. 305, L. 1999; Sec. 30-9-214, MCA 1999; redes. 30-9A-204 by Code Commissioner, 2001; amd. Sec. 51, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 51, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-205. Use or disposition of collateral permissible.** (1) A security interest is not invalid or fraudulent against creditors solely because:

(a) the debtor has the right or ability to:

(i) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of collateral or make repossessions; or

(iv) use, commingle, or dispose of proceeds; or

(b) the secured party fails to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

**History: En. Sec. 14, Ch. 305, L. 1999; Sec. 30-9-215, MCA 1999; redes. 30-9A-205 by Code Commissioner, 2001.**

**30-9A-206. Security interest arising in purchase or delivery of financial asset.** (1) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(a) the security or other financial asset is:

(i) in the ordinary course of business transferred by delivery with any necessary indorsement or assignment; and

(ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(b) the agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

**History: En. Sec. 15, Ch. 305, L. 1999; Sec. 30-9-216, MCA 1999; redes. 30-9A-206 by Code Commissioner, 2001.**

**30-9A-207. Rights and duties of secured party having possession or control of collateral.** (1) Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under 30-7-107, 30-9A-104, 30-9A-105, 30-9A-106, 30-9A-107, or 30-9A-107A:

(a) may hold as additional security any proceeds, except money or funds, received from the collateral;

(b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(c) may create a security interest in the collateral.

(4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(a) subsection (1) does not apply unless the secured party is entitled by agreement:

(i) to charge back uncollected collateral; or

(ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(b) subsections (2) and (3) do not apply.

**History: En. Sec. 16, Ch. 305, L. 1999; Sec. 30-9-217, MCA 1999; redes. 30-9A-207 by Code Commissioner, 2001; amd. Sec. 76, Ch. 575, L. 2005; amd. Sec. 52, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 52, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-208. Additional duties of secured party having control of collateral.** (1) This section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving a signed demand by the debtor:

(a) a secured party having control of a deposit account under 30-9A-104(1)(b) shall send to the bank with which the deposit account is maintained a signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;

(b) a secured party having control of a deposit account under 30-9A-104(1)(c) shall:

(i) pay the debtor the balance on deposit in the deposit account; or

(ii) transfer the balance on deposit into a deposit account in the debtor's name;

(c) a secured party, other than a buyer, having control under 30-9A-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(d) a secured party having control of investment property under 30-8-116(4)(b) or 30-9A-106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained a signed record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(e) a secured party having control of a letter-of-credit right under 30-9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party;

(f) a secured party having control under 30-7-107 of an authoritative electronic copy of an electronic document of title shall transfer control of the electronic copy to the debtor or a person designated by the debtor; and

(g) a secured party having control under 30-12A-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

**History: En. Sec. 17, Ch. 305, L. 1999; Sec. 30-9-218, MCA 1999; redes. 30-9A-208 by Code Commissioner, 2001; amd. Sec. 77, Ch. 575, L. 2005; amd. Sec. 53, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 53, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-209. Duties of secured party if account debtor has been notified of assignment.** (1) Except as otherwise provided in subsection (3), this section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under 30-9A-406 or 30-12A-106(2) of an assignment to the secured party as assignee a signed record that releases the account debtor from any further obligation to the secured party.

(3) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**History: En. Sec. 18, Ch. 305, L. 1999; Sec. 30-9-219, MCA 1999; redes. 30-9A-209 by Code Commissioner, 2001; amd. Sec. 54, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 54, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-210. Request for accounting — request regarding list of collateral or statement of account.** (1) In this section, the following definitions apply:

(a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

(b) "Request for an accounting" means a record signed by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record signed by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record signed by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14 days after receipt:

(a) in the case of a request for an accounting, by signing and sending to the debtor an accounting; and

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by signing and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor a signed record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, that claims no interest in the collateral when it receives the request, and that claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed record:

(a) disclaiming any interest in the collateral; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, that claims no interest in the obligations when it receives the request, and that claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed record:

(a) disclaiming any interest in the obligations; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

**History: En. Sec. 19, Ch. 305, L. 1999; amd. Sec. 6, Ch. 179, L. 2001; Sec. 30-9-220, MCA 1999; redes. 30-9A-210 by Code Commissioner, 2001; amd. Sec. 55, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 55, Ch. 200, L. 2025. Amendment effective October 1, 2025.

## Part 3
## Perfection and Priority

**30-9A-301. Law governing perfection and priority of security interests.** Except as otherwise provided in 30-9A-303 through 30-9A-306 and 30-9A-306B, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4), while negotiable tangible documents, goods, instruments, or money is located in a jurisdiction, the local law of that jurisdiction governs:

(a) perfection of a security interest in the goods by filing a fixture filing;

(b) perfection of a security interest in timber to be cut; and

(c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**History: En. Sec. 20, Ch. 305, L. 1999; Sec. 30-9-321, MCA 1999; redes. 30-9A-301 by Code Commissioner, 2001; amd. Sec. 78, Ch. 575, L. 2005; amd. Sec. 56, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 56, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-302. Law governing perfection and priority of agricultural liens.** Subject to the provisions of 30-9A-501, while farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

**History: En. Sec. 21, Ch. 305, L. 1999; Sec. 30-9-322, MCA 1999; redes. 30-9A-302 by Code Commissioner, 2001; amd. Sec. 2, Ch. 207, L. 2005.**

**30-9A-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.** (1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

**History: En. Sec. 22, Ch. 305, L. 1999; Sec. 30-9-323, MCA 1999; redes. 30-9A-303 by Code Commissioner, 2001.**

**30-9A-304. Law governing perfection and priority of security interests in deposit accounts.** (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.

(2) The following rules determine a bank's jurisdiction for purposes of this part:

(a) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of chapters 1 through 9A or this part, that jurisdiction is the bank's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(d) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(e) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**History: En. Sec. 23, Ch. 305, L. 1999; Sec. 30-9-324, MCA 1999; redes. 30-9A-304 by Code Commissioner, 2001; amd. Sec. 57, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 57, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-305. Law governing perfection and priority of security interests in investment property.** (1) Except as otherwise provided in subsection (3), the following rules apply:

(a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(b) The local law of the issuer's jurisdiction as specified in 30-8-120(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(c) The local law of the securities intermediary's jurisdiction as specified in 30-8-120(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(e) Subsections (1)(b), (1)(c), and (1)(d) apply even if the transaction does not bear any relation to the jurisdiction.

(2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of chapters 1 through 9A or this part, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(d) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(e) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(3) The local law of the jurisdiction in which the debtor is located governs:

(a) perfection of a security interest in investment property by filing;

(b) automatic perfection of a security interest in investment property granted by a broker or securities intermediary; and

(c) automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary.

**History: En. Sec. 24, Ch. 305, L. 1999; Sec. 30-9-325, MCA 1999; redes. 30-9A-305 by Code Commissioner, 2001; amd. Sec. 58, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 58, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-306. Law governing perfection and priority of security interests in letter-of-credit rights.** (1) Subject to subsection (3), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(2) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 30-5-136.

(3) This section does not apply to a security interest that is perfected only under 30-9A-308(4).

**History: En. Sec. 25, Ch. 305, L. 1999; Sec. 30-9-326, MCA 1999; redes. 30-9A-306 by Code Commissioner, 2001.**

**30-9A-306A. Laws governing perfection and priority of security interests in chattel paper.** (1) Except as provided in subsection (4), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(2) The following rules determine the chattel paper's jurisdiction under this section:

(a) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this chapter, or this code, that jurisdiction is the chattel paper's jurisdiction.

(b) If subsection (2)(a) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this chapter, or this code, that jurisdiction is the chattel paper's jurisdiction.

(c) If subsections (2)(a) and (2)(b) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(d) If subsections (2)(a), (2)(b), and (2)(c) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(e) If subsections (2)(a) through (2)(d) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(3) If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(a) perfection of a security interest in the chattel paper by possession under 30-9A-313; and

(b) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(4) The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

**History:** **En. Sec. 59, Ch. 200, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-306B. Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.** (1) Except as provided in subsection (2), the local law of the controllable electronic record's jurisdiction specified in 30-12A-107(3) and (4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(2) The local law of the jurisdiction in which the debtor is located governs:

(a) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(b) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

**History:** **En. Sec. 60, Ch. 200, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-307. Location of debtor.** (1) In this section, "place of business" means a place where a debtor conducts its affairs.

(2) Except as otherwise provided in this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(3) Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's

obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) does not apply, the debtor is located in the District of Columbia.

(4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3).

(5) A registered organization that is organized under the law of a state is located in that state.

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is a registered organization and is not organized under the law of the United States or a state are located:

(a) in the state that the law of the United States designates, if the law designates a state of location;

(b) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(c) in the District of Columbia, if subsection (6)(a) or (6)(b) does not apply.

(7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) notwithstanding:

(a) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(b) the dissolution, winding up, or cancellation of the existence of the registered organization.

(8) The United States is located in the District of Columbia.

(9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(11) This section applies only for purposes of this part.

**History: En. Sec. 26, Ch. 305, L. 1999; Sec. 30-9-327, MCA 1999; redes. 30-9A-307 by Code Commissioner, 2001; amd. Sec. 4, Ch. 75, L. 2013.**

**30-9A-308. When security interest or agricultural lien is perfected — continuity of perfection.** (1) Except as otherwise provided in 30-9A-309 and this section, a security interest is perfected if it has attached and all of the applicable requirements for perfection in 30-9A-310 through 30-9A-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(2) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in 30-9A-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(3) A security interest or agricultural lien is perfected continuously if it is originally perfected in one manner under this chapter and is later perfected in another manner under this chapter, without an intermediate period when it was unperfected.

(4) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(5) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(6) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(7) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

**History: En. Sec. 27, Ch. 305, L. 1999; Sec. 30-9-328, MCA 1999; redes. 30-9A-308 by Code Commissioner, 2001.**

**30-9A-309. Security interest perfected on attachment.** The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in 30-9A-311(2) with respect to consumer goods that are subject to a statute or treaty described in 30-9A-311(1);

(2) an assignment of accounts or payment intangibles that does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health care goods or services;

(6) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under 30-4-208;

(8) a security interest of an issuer or nominated person arising under 30-5-118;

(9) a security interest arising in the purchase or delivery of a financial asset under 30-9A-206(3);

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

**History: En. Sec. 28, Ch. 305, L. 1999; Sec. 30-9-329, MCA 1999; redes. 30-9A-309 by Code Commissioner, 2001.**

**30-9A-310. When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.** (1) Except as otherwise provided in 30-9A-312(2) or subsection (2) of this section, a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect a security interest:

(a) that is perfected under 30-9A-308(4), (5), (6), or (7);

(b) that is perfected under 30-9A-309 when it attaches;

(c) in property subject to a statute, regulation, or treaty described in 30-9A-311(1);

(d) in goods in possession of a bailee that is perfected under 30-9A-312(4)(a) or (4)(b);

(e) in certificated securities, documents, goods, or instruments that is perfected without filing or possession under 30-9A-312(5), (6), or (7);

(f) in collateral in the secured party's possession under 30-9A-313;

(g) in a certificated security that is perfected by delivery of the security certificate to the secured party under 30-9A-313;

(h) in a controllable account, controllable electronic record, controllable payment intangible, deposit account, electronic document, investment property, or letter-of-credit right that is perfected by control under 30-9A-314;

(i) in chattel paper that is perfected by possession and control under 30-9A-314A;

(j) in proceeds which is perfected under 30-9A-315; or

(k) that is perfected under 30-9A-316.

(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**History: En. Sec. 29, Ch. 305, L. 1999; Sec. 30-9-330, MCA 1999; redes. 30-9A-310 by Code Commissioner, 2001; amd. Sec. 79, Ch. 575, L. 2005; amd. Sec. 61, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 61, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.** (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9A-310(1);

(b) the certificate of title provisions of Title 23 or 61; or

(c) a statute of another jurisdiction that provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9A-313 and 30-9A-316(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9A-316(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

**History: En. Sec. 30, Ch. 305, L. 1999; amd. Sec. 7, Ch. 179, L. 2001; Sec. 30-9-331, MCA 1999; redes. 30-9A-311 by Code Commissioner, 2001; amd. Sec. 38, Ch. 477, L. 2003; amd. Sec. 5, Ch. 75, L. 2013.**

**30-9A-312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, negotiable documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper, instruments, controllable accounts, controllable electronic records, controllable payment intangibles, investment property, or negotiable documents may be perfected by filing.

(2) Except as otherwise provided in 30-9A-315(3) and (4) for proceeds:

(a) a security interest in a deposit account may be perfected only by control under 30-9A-314;

(b) a security interest in a letter-of-credit right may be perfected only by control under 30-9A-314, except as otherwise provided in 30-9A-308(4); and

(c) a security interest in money may be perfected only by the secured party's taking possession under 30-9A-313.

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(a) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(6) A perfected security interest in a negotiable document or goods in possession or control of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) ultimate sale or exchange; or

(b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(a) ultimate sale or exchange; or

(b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter.

**History: En. Sec. 31, Ch. 305, L. 1999; Sec. 30-9-332, MCA 1999; redes. 30-9A-312 by Code Commissioner, 2001; amd. Sec. 80, Ch. 575, L. 2005; amd. Sec. 62, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 62, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-313. When possession by or delivery to secured party perfects security interest without filing.** (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in goods, instruments, negotiable tangible documents, or money by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 30-8-331.

(2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 30-9A-316(4).

(3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(a) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(b) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit.

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs not earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 30-8-331 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(7) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under 30-8-331(1) or subsection (3) of this section, even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(a) to hold possession of the collateral for the secured party's benefit; or

(b) to redeliver the collateral to the secured party.

(9) A secured party does not relinquish possession even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

**History: En. Sec. 32, Ch. 305, L. 1999; Sec. 30-9-333, MCA 1999; redes. 30-9A-313 by Code Commissioner, 2001; amd. Sec. 81, Ch. 575, L. 2005; amd. Sec. 63, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 63, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-314. Perfection by control.** (1) A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, investment property, or letter-of-credit rights may be perfected by control of the collateral under 30-7-107, 30-9A-104, 30-9A-106, 30-9A-107, or 30-9A-107A.

(2) A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, or letter-of-credit rights is perfected by control under 30-7-107, 30-9A-104, 30-9A-105, 30-9A-107, or 30-9A-107A not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under 30-9A-106 not earlier than the time the secured party obtains control and remains perfected by control until:

(a) the secured party does not have control; and

(b) one of the following occurs:

(i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**History: En. Sec. 33, Ch. 305, L. 1999; Sec. 30-9-334, MCA 1999; redes. 30-9A-314 by Code Commissioner, 2001; amd. Sec. 82, Ch. 575, L. 2005; amd. Sec. 64, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 64, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-314A. Perfection by possession and control of chattel paper.** (1) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(2) A security interest is perfected under subsection (1) not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection (1) only while the secured party retains possession and control.

(3) Section 30-9A-313(3) and (6) through (9) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

**History: En. Sec. 65, Ch. 200, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-315. Secured party's rights on disposition of collateral and in proceeds.** (1) Except as otherwise provided in 30-2-403(2) and this chapter:

(a) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(b) a security interest attaches to any identifiable proceeds of collateral.

(2) Proceeds that are commingled with other property are identifiable proceeds:

(a) if the proceeds are goods, to the extent provided by 30-9A-336; and

(b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

(3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(4) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(a) the following conditions are satisfied:

(i) a filed financing statement covers the original collateral;

(ii) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(iii) the proceeds are not acquired with cash proceeds;

(b) the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected when the security interest attaches to the proceeds or within 20 days thereafter.

(5) If a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under subsection (4)(a) becomes unperfected at the later of:

(a) when the effectiveness of the filed financing statement lapses under 30-9A-515 or is terminated under 30-9A-513; or

(b) the 21st day after the security interest attaches to the proceeds.

**History: En. Sec. 34, Ch. 305, L. 1999; Sec. 30-9-335, MCA 1999; redes. 30-9A-315 by Code Commissioner, 2001.**

**30-9A-316. Effect of change in applicable law.** (1) A security interest perfected pursuant to the law of the jurisdiction designated in 30-9A-301(1), 30-9A-305(3), 30-9A-306A(4), or 30-9A-306B(2) remains perfected until the earliest of:

(a) the time perfection would have ceased under the law of that jurisdiction;

(b) the expiration of 4 months after a change of the debtor's location to another jurisdiction;

(c) the expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction; or

(d) the expiration of 1 year after a new debtor located in another jurisdiction becomes bound under 30-9A-203(4).

(2) If a security interest described in subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into another jurisdiction; and

(c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(4) Except as otherwise provided in subsection (5), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(5) A security interest described in subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under 30-9A-311(2) or 30-9A-313 are not satisfied before the earlier of:

(a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(b) the expiration of 4 months after the goods had become so covered.

(6) A security interest in chattel paper, a controllable account, controllable electronic record, controllable payment intangible, deposit account, letter-of-credit right, or investment property that is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(a) the time the security interest would have become unperfected under the law of that jurisdiction; or

(b) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

(7) If a security interest described in subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(8) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(b) If a security interest perfected by a financing statement that is effective under subsection (8)(a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under 30-9A-203(4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or the expiration of the 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**History: En. Sec. 35, Ch. 305, L. 1999; Sec. 30-9-336, MCA 1999; redes. 30-9A-316 by Code Commissioner, 2001; amd. Sec. 6, Ch. 75, L. 2013; amd. Sec. 66, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 66, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-317. Interests that take priority over or take free of security interest or agricultural lien.** (1) A security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9A-322; and

(b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the time:

(i) the security interest or agricultural lien is perfected; or

(ii) one of the conditions specified in 30-9A-203(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of goods, instruments, tangible documents, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) Subject to subsections (6) through (9), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9A-320 and 30-9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

(6) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

(a) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and

(b) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under 30-9A-105, obtains control of each authoritative electronic copy.

(7) A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under 30-7-107, obtains control of each authoritative electronic copy.

(8) A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(9) A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

**History: En. Sec. 36, Ch. 305, L. 1999; amd. Sec. 8, Ch. 179, L. 2001; Sec. 30-9-337, MCA 1999; redes. 30-9A-317 by Code Commissioner, 2001; amd. Sec. 83, Ch. 575, L. 2005; amd. Sec. 7, Ch. 75, L. 2013; amd. Sec. 67, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 67, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-318. No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.** (1) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(2) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

**History: En. Sec. 37, Ch. 305, L. 1999; Sec. 30-9-338, MCA 1999; redes. 30-9A-318 by Code Commissioner, 2001.**

**30-9A-319. Rights and title of consignee with respect to creditors and purchasers.** (1) Except as otherwise provided in subsection (2), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee has rights and title to the goods identical to those the consignor had or had power to transfer.

(2) For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's

possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

**History:** **En. Sec. 38, Ch. 305, L. 1999; Sec. 30-9-339, MCA 1999; redes. 30-9A-319 by Code Commissioner, 2001.**

**30-9A-320. Buyer of goods.** (1) Except as otherwise provided in subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(2) Except as otherwise provided in subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(a) without knowledge of the security interest;

(b) for value;

(c) primarily for the buyer's personal, family, or household purposes; and

(d) before the filing of a financing statement covering the goods.

(3) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by 30-9A-316(1) and (2).

(4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under 30-9A-313.

**History:** **En. Sec. 39, Ch. 305, L. 1999; Sec. 30-9-340, MCA 1999; redes. 30-9A-320 by Code Commissioner, 2001.**

**30-9A-321. Licensee of general intangible and lessee of goods in ordinary course of business.** (1) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in ordinary course of business if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(2) A licensee of a general intangible in ordinary course of business takes its rights under the license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(3) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

**History:** **En. Sec. 40, Ch. 305, L. 1999; Sec. 30-9-341, MCA 1999; redes. 30-9A-321 by Code Commissioner, 2001.**

**30-9A-322. Priorities among conflicting security interests and agricultural liens in same collateral.** (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(2) For the purposes of subsection (1)(a):

(a) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(b) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(3) Except as otherwise provided in subsection (6), a security interest in collateral that qualifies for priority over a conflicting security interest under 30-9A-327, 30-9A-328, 30-9A-329, 30-9A-330, or 30-9A-331 also has priority over a conflicting security interest in:

(a) any supporting obligation for the collateral; and

(b) proceeds of the collateral if:

(i) the security interest in proceeds is perfected;

(ii) the proceeds are:

(A) cash proceeds; or

(B) of the same type as the collateral; and

(iii) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(4) Subject to subsection (5) and except as otherwise provided in subsection (6), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(6) Subsections (1) through (5) are subject to:

(a) subsection (7) and the other provisions of this part;

(b) 30-4-208 with respect to a security interest of a collecting bank;

(c) 30-5-118 with respect to a security interest of an issuer or nominated person; and

(d) 30-9A-110 with respect to a security interest arising under chapter 2 or 2A.

(7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

**History: En. Sec. 41, Ch. 305, L. 1999; Sec. 30-9-342, MCA 1999; redes. 30-9A-322 by Code Commissioner, 2001.**

**30-9A-323. Future advances.** (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under 30-9A-322(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(a) is made while the security interest is perfected only:

(i) under 30-9A-309 when it attaches; or

(ii) temporarily under 30-9A-312(5), (6), or (7); and

(b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 30-9A-309 or 30-9A-312(5), (6), or (7).

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(a) without knowledge of the lien; or

(b) pursuant to a commitment entered into without knowledge of the lien.

(3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods takes free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the buyer's purchase; or

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in subsection (7), a lessee of goods takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the lease; or

(b) 45 days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

**History: En. Sec. 42, Ch. 305, L. 1999; amd. Sec. 9, Ch. 179, L. 2001; Sec. 30-9-343, MCA 1999; redes. 30-9A-323 by Code Commissioner, 2001; amd. Sec. 68, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 68, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-324. Priority of purchase-money security interests.** (1) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and except as otherwise provided in 30-9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to subsection (3) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper if so provided in 30-9A-330, and except as otherwise provided in 30-9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(b) the purchase-money secured party sends a signed notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(3) Subsections (2)(b) through (2)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under 30-9A-312(6), before the beginning of the 20-day period thereunder.

(4) Subject to subsection (5) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and except as otherwise provided in 30-9A-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(b) the purchase-money secured party sends a signed notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 6 months before the debtor receives possession of the livestock; and

(d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(5) Subsections (4)(b) through (4)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under 30-9A-312(6), before the beginning of the 20-day period thereunder.

(6) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and except as otherwise provided in 30-9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(7) If more than one security interest qualifies for priority in the same collateral under subsection (1), (2), (4), or (6):

(a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(b) in all other cases, 30-9A-322(1) applies to the qualifying security interests.

**History:** **En. Sec. 43, Ch. 305, L. 1999; Sec. 30-9-344, MCA 1999; redes. 30-9A-324 by Code Commissioner, 2001; amd. Sec. 69, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 69, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-325. Priority of security interests in transferred collateral.** (1) Except as otherwise provided in subsection (2), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(a) the debtor acquired the collateral subject to the security interest created by the other person;

(b) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(c) there is no period thereafter when the security interest is unperfected.

(2) Subsection (1) subordinates a security interest only if the security interest:

(a) otherwise would have priority solely under 30-9A-322(1) or 30-9A-324; or

(b) arose solely under 30-2-711(3) or 30-2A-508(5).

**History:** **En. Sec. 44, Ch. 305, L. 1999; Sec. 30-9-345, MCA 1999; redes. 30-9A-325 by Code Commissioner, 2001.**

**30-9A-326. Priority of security interests created by new debtor.** (1) Subject to subsection (2), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of 30-9A-316(9)(a) or 30-9A-508 is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

(2) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (1). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**History:** **En. Sec. 45, Ch. 305, L. 1999; Sec. 30-9-346, MCA 1999; redes. 30-9A-326 by Code Commissioner, 2001; amd. Sec. 8, Ch. 75, L. 2013.**

**30-9A-326A. Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.** A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

**History:** **En. Sec. 70, Ch. 200, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-9A-327. Priority of security interests in deposit account.** The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under 30-9A-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subsections (3) and (4), security interests perfected by control under 30-9A-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subsection (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under 30-9A-104(1)(c) has priority over a security interest held by the bank with which the deposit account is maintained.

**History: En. Sec. 46, Ch. 305, L. 1999; Sec. 30-9-347, MCA 1999; redes. 30-9A-327 by Code Commissioner, 2001.**

**30-9A-328. Priority of security interests in investment property.** The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under 30-9A-106 has priority over a security interest of a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4), conflicting security interests held by secured parties each of which has control under 30-9A-106 rank according to priority in time of:

(a) if the collateral is a security, obtaining control;

(b) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under 30-8-116(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 30-8-116(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection if the other person were the secured party; or

(c) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in 30-9A-106(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form that is perfected by taking delivery under 30-9A-313(1) and not by control under 30-9A-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests granted by a broker, securities intermediary, or commodity intermediary that are perfected without control under 30-9A-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by 30-9A-322 and 30-9A-323.

**History: En. Sec. 47, Ch. 305, L. 1999; Sec. 30-9-348, MCA 1999; redes. 30-9A-328 by Code Commissioner, 2001.**

**30-9A-329. Priority of security interests in letter-of-credit right.** The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under 30-9A-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under 30-9A-314 rank according to priority in time of obtaining control.

**History: En. Sec. 48, Ch. 305, L. 1999; Sec. 30-9-349, MCA 1999; redes. 30-9A-329 by Code Commissioner, 2001.**

**30-9A-330. Purchase of chattel paper or instrument.** (1) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of each authoritative tangible copy of the record evidencing the chattel paper and obtains control under 30-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper; and

(b) the authoritative copies of the record evidencing the chattel paper do not indicate that the chattel paper has been assigned to an identified assignee other than the purchaser.

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, takes possession of each authoritative tangible copy of the record evidencing the chattel paper, and obtains control under 30-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in 30-9A-327, a purchaser having priority in chattel paper under subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that:

(a) 30-9A-322 provides for priority in the proceeds; or

(b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(4) Except as otherwise provided in 30-9A-331(1), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(5) For purposes of subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(6) For purposes of subsections (2) and (4), if the authoritative copies of the record evidencing chattel paper or an instrument indicates that the chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**History: En. Sec. 49, Ch. 305, L. 1999; Sec. 30-9-350, MCA 1999; redes. 30-9A-330 by Code Commissioner, 2001; amd. Sec. 71, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 71, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-331. Priority of rights of purchasers of controllable accounts, controllable electronic records, controllable payment intangibles, documents, instruments, and securities under other chapters — priority of interests in financial assets and security entitlements and protection against assertion of claims under chapter 8 and chapter 12A, part 1.** (1) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has been duly negotiated, a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8 and chapter 12A, part 1.

(2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under chapter 8 or chapter 12A, part 1.

(3) Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons mentioned in subsections (1) and (2).

**History: En. Sec. 50, Ch. 305, L. 1999; amd. Sec. 10, Ch. 179, L. 2001; Sec. 30-9-351, MCA 1999; redes. 30-9A-331 by Code Commissioner, 2001; amd. Sec. 72, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 72, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-332. Transfer of money — transfer of funds from deposit account.** (1) A transferee of money takes the money free of a security interest if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

**History: En. Sec. 51, Ch. 305, L. 1999; Sec. 30-9-352, MCA 1999; redes. 30-9A-332 by Code Commissioner, 2001; amd. Sec. 73, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 73, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-333. Priority of certain liens arising by operation of law.** (1) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(a) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(b) that is created by statute or rule of law in favor of the person; and

(c) whose effectiveness depends on the person's possession of the goods.

(2) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

**History: En. Sec. 52, Ch. 305, L. 1999; Sec. 30-9-353, MCA 1999; redes. 30-9A-333 by Code Commissioner, 2001.**

**30-9A-334. Priority of security interests in fixtures and crops.** (1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property that is not the debtor.

(4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(a) the security interest is a purchase-money security interest;

(b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(i) factory or office machines;

(ii) equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) replacements of domestic appliances that are consumer goods;

(c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(d) the security interest is:

(i) created in a manufactured home in a manufactured-home transaction; and

(ii) perfected pursuant to a statute described in 30-9A-311(1)(b).

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under subsection (6) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded record so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(10) Subsection (9) prevails over any inconsistent provisions of Title 71, chapter 3, parts 8 and 9.

**History:** **En. Sec. 53, Ch. 305, L. 1999; Sec. 30-9-354, MCA 1999; redes. 30-9A-334 by Code Commissioner, 2001; amd. Sec. 74, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 74, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-335. Accessions.** (1) A security interest may be created in an accession and continues in collateral that becomes an accession.

(2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(3) Except as otherwise provided in subsection (4), the other provisions of this part determine the priority of a security interest in an accession.

(4) A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under 30-9A-311(2).

(5) After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession from other goods under subsection (5) shall promptly reimburse any encumbrancer or owner of the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**History:** **En. Sec. 54, Ch. 305, L. 1999; Sec. 30-9-355, MCA 1999; redes. 30-9A-335 by Code Commissioner, 2001.**

**30-9A-336. Commingled goods.** (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of this part, as applicable, determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

**History: En. Sec. 55, Ch. 305, L. 1999; amd. Sec. 11, Ch. 179, L. 2001; Sec. 30-9-356, MCA 1999; redes. 30-9A-336 by Code Commissioner, 2001.**

**30-9A-337. Priority of security interests in goods covered by certificate of title.** If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under 30-9A-311(2), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

**History: En. Sec. 56, Ch. 305, L. 1999; Sec. 30-9-357, MCA 1999; redes. 30-9A-337 by Code Commissioner, 2001.**

**30-9A-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.** If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 30-9A-516(2)(e) that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**History: En. Sec. 57, Ch. 305, L. 1999; Sec. 30-9-358, MCA 1999; redes. 30-9A-338 by Code Commissioner, 2001; amd. Sec. 84, Ch. 575, L. 2005; amd. Sec. 113, Ch. 200, L. 2025.**

**Compiler's Comments**

*Directions to Code Commissioner:* Pursuant to sec. 113, Ch. 200, L. 2025, in (2) the Code Commissioner deleted "tangible chattel paper". Effective October 1, 2025.

**30-9A-339. Priority subject to subordination.** This chapter does not preclude subordination by agreement by a person entitled to priority.

**History: En. Sec. 58, Ch. 305, L. 1999; Sec. 30-9-359, MCA 1999; redes. 30-9A-339 by Code Commissioner, 2001.**

**30-9A-340. Effectiveness of right of recoupment or setoff against deposit account.** (1) Except as otherwise provided in subsection (3), a bank with which a deposit account is maintained may exercise against a secured party that holds a security interest in the deposit account any right of recoupment or setoff.

(2) Except as otherwise provided in subsection (3), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under 30-9A-104(1)(c) if the setoff is based on a claim against the debtor.

**History: En. Sec. 59, Ch. 305, L. 1999; Sec. 30-9-360, MCA 1999; redes. 30-9A-340 by Code Commissioner, 2001.**

**30-9A-341. Bank's rights and duties with respect to deposit account.** Except as otherwise provided in 30-9A-340(3) and unless the bank otherwise agrees in a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

**History: En. Sec. 60, Ch. 305, L. 1999; Sec. 30-9-361, MCA 1999; redes. 30-9A-341 by Code Commissioner, 2001; amd. Sec. 75, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 75, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-342. Bank's right to refuse to enter into or disclose existence of control agreement.** This chapter does not require a bank to enter into an agreement of the type described in 30-9A-104(1)(b), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

**History: En. Sec. 61, Ch. 305, L. 1999; Sec. 30-9-362, MCA 1999; redes. 30-9A-342 by Code Commissioner, 2001.**

## Part 4
## Rights of Third Parties

**30-9A-401. Alienability of debtor's rights.** (1) Except as otherwise provided in 30-9A-406 through 30-9A-409 and subsection (2) of this section, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by applicable law other than this chapter.

(2) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

**History: En. Sec. 62, Ch. 305, L. 1999; Sec. 30-9-441, MCA 1999; redes. 30-9A-401 by Code Commissioner, 2001.**

**30-9A-402. Secured party not obligated on contract of debtor.** The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not impose upon a secured party liability in contract or tort for the debtor's acts or omissions.

**History: En. Sec. 63, Ch. 305, L. 1999; Sec. 30-9-442, MCA 1999; redes. 30-9A-402 by Code Commissioner, 2001.**

**30-9A-403. Agreement not to assert defense against assignee.** (1) In this section, "value" has the meaning provided in 30-3-303(1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(a) for value;

(b) in good faith;

(c) without notice of a claim of a property or possessory right to the property assigned; and

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 30-3-305(1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 30-3-305(2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record provide a statement to the effect that the rights of an assignee are subject to claims or defenses that the consumer debtor could assert against the original obligee, and the record does not provide such a statement:

(a) the record has the same effect as if the record provided such a statement; and

(b) the account debtor may assert against an assignee those claims and defenses that would have been available if the record provided such a statement.

(5) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(6) Except as otherwise provided in subsection (4), this section does not displace law other than this chapter that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

**History:** **En. Sec. 64, Ch. 305, L. 1999; Sec. 30-9-443, MCA 1999; redes. 30-9A-403 by Code Commissioner, 2001.**

**30-9A-404. Rights acquired by assignee — claim and defenses against assignee.** (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) through (5), the rights of an assignee are subject to:

(a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(b) any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment signed by the assignor or the assignee.

(2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record provide a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not provide such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record provided such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

**History:** **En. Sec. 65, Ch. 305, L. 1999; Sec. 30-9-444, MCA 1999; redes. 30-9A-404 by Code Commissioner, 2001; amd. Sec. 76, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 76, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-405. Modification of assigned contract.** (1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) through (4).

(2) Subsection (1) applies to the extent that:

(a) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(b) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under 30-9A-406(1).

(3) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) This section does not apply to an assignment of a health-care-insurance receivable.

**History:** **En. Sec. 66, Ch. 305, L. 1999; Sec. 30-9-445, MCA 1999; redes. 30-9A-405 by Code Commissioner, 2001.**

**30-9A-406. Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.** (1) Subject to subsections (2) through (9) and (11), an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsections (8) and (11), notification is ineffective under subsection (1):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(i) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsections (8) and (11), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) In this subsection (4), "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in 30-2A-303, 30-9A-407, and subsections (5) and (10) of this section, and subject to subsection (8) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.

(6) Except as otherwise provided in 30-2A-303, 30-9A-407, and subsection (10) of this section, and subject to subsections (8) and (9) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(7) Subject to subsections (8) and (11), an account debtor may not waive or vary its option under subsection (2)(c).

(8) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(9) This section does not apply to an assignment of a health-care-insurance receivable.

(10) Subsections (4) and (6) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(11) Subsections (1), (2), (3), and (7) do not apply to a controllable account or controllable payment intangible.

**History: En. Sec. 67, Ch. 305, L. 1999; amd. Sec. 12, Ch. 179, L. 2001; Sec. 30-9-446, MCA 1999; redes. 30-9A-406 by Code Commissioner, 2001; amd. Sec. 9, Ch. 75, L. 2013; amd. Sec. 77, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 77, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.** (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in 30-2A-303(7), a term described in subsection (1)(b) is effective to the extent that there is:

(a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(b) a delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within 30-2A-303(4). This subsection does not apply to the extent that enforcement results in a delegation of a material performance of the lessor.

**History: En. Sec. 68, Ch. 305, L. 1999; amd. Sec. 13, Ch. 179, L. 2001; Sec. 30-9-447, MCA 1999; redes. 30-9A-407 by Code Commissioner, 2001.**

**30-9A-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (1) Except as otherwise provided in subsections (2) and (7), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.

(3) Except as provided in subsection (7), a rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a

government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than this chapter but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) Subsections (1) and (3) do not apply to the assignment or transfer or the creation, attachment, or perfection of a security interest in:

(a) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(2);

(b) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4).

(6) This section prevails over any inconsistent provisions of other statutes or rules.

(7) This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(8) In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

**History: En. Sec. 69, Ch. 305, L. 1999; amd. Sec. 14, Ch. 179, L. 2001; Sec. 30-9-448, MCA 1999; redes. 30-9A-408 by Code Commissioner, 2001; amd. Sec. 10, Ch. 75, L. 2013; amd. Sec. 78, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 78, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-409. Restrictions on assignment of letter-of-credit rights ineffective.** (1) A term in a letter of credit or a rule of law, including a provision in a statute or governmental rule or regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, custom, or practice:

(a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(b) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

**History: En. Sec. 70, Ch. 305, L. 1999; amd. Sec. 15, Ch. 179, L. 2001; Sec. 30-9-449, MCA 1999; redes. 30-9A-409 by Code Commissioner, 2001.**

**30-9A-410 through 30-9A-419 reserved.**

**30-9A-420. Removal of improper or fraudulent liens — notice to secured party and debtor.** (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party and the debtor.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.

**History: En. Sec. 4, Ch. 335, L. 1993; Sec. 30-9-432, MCA 1999; redes. 30-9A-420 by Code Commissioner, 2001; amd. Sec. 1, Ch. 69, L. 2007.**

## Part 5
## Filing

**30-9A-501. Filing office.** (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) The office in which a financial institution is required to file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state.

**History: En. Sec. 71, Ch. 305, L. 1999; Sec. 30-9-521, MCA 1999; redes. 30-9A-501 by Code Commissioner, 2001; amd. Sec. 3, Ch. 207, L. 2005; amd. Sec. 32, Ch. 44, L. 2007.**

**30-9A-502. Contents of financing statement — mortgage as financing statement — time of filing financing statement.** (1) Subject to subsection (2), a financing statement is sufficient only if it:

(a) provides the name of the debtor;

(b) provides the name of the secured party or a representative of the secured party; and

(c) indicates the collateral covered by the financing statement.

(2) Except as otherwise provided in 30-9A-501(2), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut or that is filed as a fixture filing and covers goods that are or are to become fixtures must comply with the requirements of subsection (1) and also:

(a) indicate that it covers this type of collateral;

(b) indicate that it is to be filed for record in the real property records;

(c) provide a description of the real property to which the collateral is related sufficient to give constructive notice of the mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(d) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(3) A record of mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(a) the record indicates the goods or accounts that it covers;

(b) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(c) the record complies with the requirements for a financing statement in this section, but:

(i) the record need not indicate that it is to be filed in the real property records; and

(ii) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom 30-9A-503(1)(d) applies; and

(d) the record is recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

**History: En. Sec. 72, Ch. 305, L. 1999; Sec. 30-9-522, MCA 1999; redes. 30-9A-502 by Code Commissioner, 2001; amd. Sec. 11, Ch. 75, L. 2013.**

**30-9A-503. Name of debtor and secured party.** (1) A financing statement sufficiently provides the name of the debtor:

(a) except as otherwise provided in subsection (1)(c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;

(b) subject to subsection (6), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(c) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(i) provides, as the name of the debtor:

(A) if the organic record of the trust specifies a name for the trust, the name specified; or

(B) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(ii) in a separate part of the financing statement:

(A) if the name is provided in accordance with subsection (1)(c)(i)(A), indicates that the collateral is held in a trust; or

(B) if the name is provided in accordance with subsection (1)(c)(i)(B), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(d) subject to subsection (7), if the debtor is an individual to whom this state has issued a driver's license or state identification card that has not expired or to whom a tribe has issued a tribal identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license, state identification card, or tribal identification card;

(e) if the debtor is an individual to whom subsection (1)(d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(f) in other cases:

(i) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(ii) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) a trade name or other name of the debtor; or

(b) unless required under subsection (1)(f)(ii), names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (1)(b).

(7) If this state has issued to an individual more than one driver's license or state identification card of a kind described in subsection (1)(d), or if a tribe has issued more than one tribal identification card of a kind described in subsection (1)(d), the one that was issued most recently is the one to which subsection (1)(d) refers.

(8) In this section, the "name of the settlor or testator" means:

(a) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(b) in other cases, the name of the settlor or testator indicated in the trust's organic record.

**History: En. Sec. 73, Ch. 305, L. 1999; Sec. 30-9-523, MCA 1999; redes. 30-9A-503 by Code Commissioner, 2001; amd. Sec. 12, Ch. 75, L. 2013.**

**30-9A-504. Indication of collateral.** A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to 30-9A-108; or

(2) an indication that the financing statement covers all assets or all personal property.

**History: En. Sec. 74, Ch. 305, L. 1999; Sec. 30-9-524, MCA 1999; redes. 30-9A-504 by Code Commissioner, 2001.**

**30-9A-505. Filing and compliance with other statutes and treaties for consignments, leases, bailments, and other transactions.** (1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible or promissory note may file a financing statement or may comply with a statute or treaty described in 30-9A-311(1), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor."

(2) This part applies to the filing of a financing statement under subsection (1) and, as appropriate, to compliance that is equivalent to filing a financing statement under 30-9A-311(2), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance.

**History: En. Sec. 75, Ch. 305, L. 1999; Sec. 30-9-525, MCA 1999; redes. 30-9A-505 by Code Commissioner, 2001.**

**30-9A-506. Effect of errors or omissions.** (1) A financing statement substantially complying with the requirements of this part is effective, even if it includes minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with 30-9A-503(1) is seriously misleading.

(3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with 30-9A-503(1), the name provided does not make the financing statement seriously misleading.

(4) For purposes of 30-9A-508(2), the "debtor's correct name" in subsection (3) means the correct name of the new debtor.

**History: En. Sec. 76, Ch. 305, L. 1999; Sec. 30-9-526, MCA 1999; redes. 30-9A-506 by Code Commissioner, 2001.**

**30-9A-507. Effect of certain events on effectiveness of financing statement.** (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(2) Except as otherwise provided in 30-9A-508 and subsection (3) of this section, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under the standard set forth in 30-9A-506.

(3) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under 30-9A-503(1) so that the financing statement becomes seriously misleading under the standard set forth in 30-9A-506:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before or within 4 months after the filed financing statement becomes seriously misleading; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within 4 months after the financing statement became seriously misleading.

**History: En. Sec. 77, Ch. 305, L. 1999; Sec. 30-9-527, MCA 1999; redes. 30-9A-507 by Code Commissioner, 2001; amd. Sec. 13, Ch. 75, L. 2013.**

**30-9A-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.** (1) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(2) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) to be seriously misleading under the standard set forth in 30-9A-506:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before and within 4 months after the new debtor becomes bound under 30-9A-203(4); and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than 4 months after the new debtor becomes bound under 30-9A-203(4) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under 30-9A-507(1).

**History: En. Sec. 78, Ch. 305, L. 1999; Sec. 30-9-528, MCA 1999; redes. 30-9A-508 by Code Commissioner, 2001.**

**30-9A-509. Persons entitled to file record.** (1) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if:

(a) the debtor authorizes the filing in a signed record or pursuant to subsection (2) or (3); or

(b) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By signing or becoming bound as debtor by a security agreement, a debtor authorizes the filing of an initial financing statement and an amendment covering:

(a) the collateral described in the security agreement; and

(b) property that becomes collateral under 30-9A-315(1)(b), whether or not the security agreement expressly covers proceeds.

(3) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 30-9A-513(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(4) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (3).

**History: En. Sec. 79, Ch. 305, L. 1999; amd. Sec. 16, Ch. 179, L. 2001; Sec. 30-9-529, MCA 1999; redes. 30-9A-509 by Code Commissioner, 2001; amd. Sec. 79, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 79, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-510. Effectiveness of filed record.** (1) A filed record is effective only to the extent that it was filed by a person that may file it under 30-9A-509.

(2) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(3) A continuation statement that is not filed within the 6-month period prescribed by 30-9A-515(4) is ineffective.

**History: En. Sec. 80, Ch. 305, L. 1999; Sec. 30-9-530, MCA 1999; redes. 30-9A-510 by Code Commissioner, 2001.**

**30-9A-511. Secured party of record.** (1) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 30-9A-514(1), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(2) If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 30-9A-514(2), the assignee named in the amendment is a secured party of record.

(3) A person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person.

**History: En. Sec. 81, Ch. 305, L. 1999; Sec. 30-9-531, MCA 1999; redes. 30-9A-511 by Code Commissioner, 2001.**

**30-9A-512. Amendment of financing statement.** (1) Subject to 30-9A-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or subject to subsection (5), otherwise amend the information provided in, a financing statement by filing an amendment that:

(a) identifies, by its file number, the debtor, the creditor, and the initial financing statement to which the amendment relates; and

(b) if the amendment relates to an initial financing statement filed or recorded in a filing office described in 30-9A-501(1)(b), provides the date that the initial financing statement was filed or recorded and the information specified in 30-9A-502(2).

(2) Except as otherwise provided in 30-9A-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(3) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(4) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(5) An amendment is ineffective to the extent it:

(a) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(b) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

**History:** **En. Sec. 82, Ch. 305, L. 1999; Sec. 30-9-532, MCA 1999; redes. 30-9A-512 by Code Commissioner, 2001.**

**30-9A-513. Termination statement.** (1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) the debtor did not authorize the filing of the initial financing statement.

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement:

(a) within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) if earlier, within 20 days after the secured party receives a signed demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives a signed demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(a) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(b) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(c) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(d) the debtor did not authorize the filing of the initial financing statement.

(4) Except as otherwise provided in 30-9A-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in 30-9A-510, for purposes of 30-9A-519(7), 30-9A-522(1), and 30-9A-523(3), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

**History:** **En. Sec. 83, Ch. 305, L. 1999; amd. Sec. 17, Ch. 179, L. 2001; Sec. 30-9-533, MCA 1999; redes. 30-9A-513 by Code Commissioner, 2001; amd. Sec. 80, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 80, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-514. Assignment powers of secured party of record.** (1) Except as otherwise provided in subsection (3), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(2) Except as otherwise provided in subsection (3), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that:

(a) identifies, by its file number, the initial financing statement to which it relates;

(b) provides the name of the assignor; and

(c) provides the name and mailing address of the assignee.

(3) An assignment of record of a security interest in a fixture covered by a real property mortgage that is effective as a fixture filing under 30-9A-502(3) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than chapters 1 through 9A.

**History: En. Sec. 84, Ch. 305, L. 1999; Sec. 30-9-534, MCA 1999; redes. 30-9A-514 by Code Commissioner, 2001.**

**30-9A-515. Duration and effectiveness of financing statement — effect of lapsed financing statement.** (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected without filing. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in 30-9A-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(7) A record of mortgage that is effective as a fixture filing under 30-9A-502(3) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**History: En. Sec. 85, Ch. 305, L. 1999; Sec. 30-9-535, MCA 1999; redes. 30-9A-515 by Code Commissioner, 2001; amd. Sec. 14, Ch. 75, L. 2013.**

**30-9A-516. What constitutes filing — effectiveness of filing.** (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the filing office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the filing office is unable to index the record because:

(i) in the case of an initial financing statement, the record does not provide a name for the debtor;

(ii) in the case of an amendment or information statement, the record:

(A) does not identify the initial financing statement as required by 30-9A-512 or 30-9A-518, as applicable; or

(B) identifies an initial financing statement whose effectiveness has lapsed under 30-9A-515;

(iii) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(iv) in the case of a record filed or recorded in the filing office described in 30-9A-501(1)(a), the record does not provide a sufficient description of the real property to which it relates;

(d) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(e) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

(i) provide a mailing address for the debtor; or

(ii) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(f) in the case of an assignment reflected in an initial financing statement under 30-9A-514(1) or an amendment filed under 30-9A-514(2), the record does not provide a name and mailing address for the assignee; or

(g) in the case of a continuation statement, the record is not filed within the 6-month period prescribed by 30-9A-515(4).

(3) For purposes of subsection (2):

(a) a record does not provide information if the filing office is unable to read or decipher the information; and

(b) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by 30-9A-512, 30-9A-514, or 30-9A-518, is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in subsection (2), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

**History: En. Sec. 86, Ch. 305, L. 1999; Sec. 30-9-536, MCA 1999; redes. 30-9A-516 by Code Commissioner, 2001; amd. Sec. 15, Ch. 75, L. 2013.**

**30-9A-517. Effect of indexing errors.** The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

**History: En. Sec. 87, Ch. 305, L. 1999; Sec. 30-9-537, MCA 1999; redes. 30-9A-517 by Code Commissioner, 2001.**

**30-9A-518. Claim concerning inaccurate or wrongfully filed record.** (1) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) An information statement under subsection (1) must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the information statement relates to a record filed in a filing office described in 30-9A-501(1)(a), the date that the initial financing statement was filed or recorded and the information specified in 30-9A-502(2);

(b) indicate that it is an information statement; and

(c) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under 30-9A-509(4).

(4) An information statement under subsection (3) must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the information statement relates to a record filed in a filing office described in 30-9A-501(1)(a), the date that the initial financing statement was filed and the information specified in 30-9A-502(2);

(b) indicate that it is an information statement; and

(c) provide the basis for the person's belief that the person that filed the record was not entitled to do so under 30-9A-509(4).

(5) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

**History: En. Sec. 88, Ch. 305, L. 1999; Sec. 30-9-538, MCA 1999; redes. 30-9A-518 by Code Commissioner, 2001; amd. Sec. 16, Ch. 75, L. 2013.**

**30-9A-519. Numbering, maintaining, and indexing records — communicating information provided in records.** (1) For each record filed in a filing office, the filing office shall:

(a) assign a unique number to the filed record;

(b) create a record that bears the number assigned to the filed record and the date and time of filing;

(c) maintain the filed record for public inspection; and

(d) index the filed record in accordance with subsections (3), (4), and (5).

(2) A file number assigned after January 1, 2002, must include a digit that:

(a) is mathematically derived from or related to the other digits of the file number; and

(b) enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(3) Except as otherwise provided in subsections (4) and (5), the filing office shall:

(a) index an initial financing statement according to the name of the debtor and shall index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(b) index a record that provides a name of a debtor that was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(4) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(a) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(b) to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or if indexing is by description, as if the financing statement were a mortgage of the real property described.

(5) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under 30-9A-514(1) or an amendment filed under 30-9A-514(2):

(a) under the name of the assignor as grantor; and

(b) to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(6) The filing office shall maintain a capability:

(a) to retrieve a record by the name of the debtor and:

(i) if the filing office is described in 30-9A-501(1)(a), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed; or

(ii) if the filing office is described in 30-9A-501(1)(b), by the file number assigned to the initial financing statement to which the record relates; and

(b) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(7) The filing office may not remove a debtor's name from the index until 1 year after the effectiveness of a financing statement naming the debtor lapses under 30-9A-515 with respect to all secured parties of record.

(8) The filing office shall perform the acts required by subsections (1) through (5) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the record in question.

(9) Subsections (2) and (8) do not apply to a filing office described in 30-9A-501(1)(a).

**History: En. Sec. 89, Ch. 305, L. 1999; Sec. 30-9-539, MCA 1999; redes. 30-9A-519 by Code Commissioner, 2001.**

**30-9A-520. Acceptance and refusal to record.** (1) A filing office shall refuse to accept a record for filing for a reason set forth in 30-9A-502 and 30-9A-516(2) and may refuse to accept a record for filing only for a reason set forth in 30-9A-502 and 30-9A-516(2).

(2) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than 2 business days after the filing office receives the record.

(3) A filed financing statement complying with 30-9A-502(1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, 30-9A-338 applies to a filed financing statement providing information described in 30-9A-516(2)(e) that is incorrect at the time the financing statement is filed.

(4) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

**History: En. Sec. 90, Ch. 305, L. 1999; Sec. 30-9-540, MCA 1999; redes. 30-9A-520 by Code Commissioner, 2001.**

**30-9A-521. Uniform form of written financing statement and amendment.** (1) A filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in 30-9A-516(2).

(2) A filing office that accepts written records may not refuse to accept a written record in the form and format set forth as Form UCC3 and Form UCC3Ad in the final official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in 30-9A-516(2).

**History: En. Sec. 91, Ch. 305, L. 1999; Sec. 30-9-541, MCA 1999; redes. 30-9A-521 by Code Commissioner, 2001; amd. Sec. 17, Ch. 75, L. 2013.**

**30-9A-522. Maintenance and destruction of records.** (1) Subject to the requirements of Title 2, chapter 6, part 11, the filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed under 30-9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(a) if the record was filed or recorded in the filing office described in 30-9A-501(1)(a), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(b) if the record was filed or recorded in the filing office described in 30-9A-501(1)(b), by using the date and time file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office may immediately destroy any written record evidencing a financing

statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with subsection (1).

**History: En. Sec. 92, Ch. 305, L. 1999; Sec. 30-9-542, MCA 1999; redes. 30-9A-522 by Code Commissioner, 2001; amd. Sec. 48, Ch. 348, L. 2015.**

**30-9A-523. Information from filing office — sale or license of records.** (1) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to 30-9A-519(1)(a) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(a) note upon the copy the number assigned to the record pursuant to 30-9A-519(1)(a) and the date and time of the filing of the record; and

(b) send the copy to the person.

(2) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(a) the information in the record;

(b) the number assigned to the record pursuant to 30-9A-519(1)(a); and

(c) the date and time of the filing of the record.

(3) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(a) whether there is on file on a date and time specified by the filing office, but not a date earlier than 3 business days before the filing office receives the request, any financing statement that:

(i) designates a particular debtor;

(ii) has not lapsed under 30-9A-515 with respect to all secured parties of record; and

(iii) if the request so states, has lapsed under 30-9A-515 and a record of which is maintained by the filing office under 30-9A-522(1);

(b) the date and time of filing of each financing statement; and

(c) the information provided in each financing statement.

(4) In complying with its duty under subsection (3), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(5) The filing office shall perform the acts required by subsections (1) through (4) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the request.

(6) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in a reasonable form or medium from time to time available to the filing office.

**History: En. Sec. 93, Ch. 305, L. 1999; Sec. 30-9-543, MCA 1999; redes. 30-9A-523 by Code Commissioner, 2001.**

**30-9A-524. Delay by filing office.** Delay by the filing office beyond a time limit prescribed in this part is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

**History: En. Sec. 94, Ch. 305, L. 1999; Sec. 30-9-544, MCA 1999; redes. 30-9A-524 by Code Commissioner, 2001.**

**30-9A-525. Fees.** (1) Except as otherwise provided in subsections (2) and (3), the fee for each of the following must be set and deposited by the secretary of state as prescribed in 2-15-405:

(a) filing and indexing a record under this part, other than an initial financing statement filed in connection with a public-finance transaction or a manufactured-home transaction;

(b) filing and indexing an initial financing statement of the kind described in 30-9A-502(3); and

(c) responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor.

(2) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9A-502(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply.

(3) The secretary of state shall charge a fee commensurate with current filing fees to file and index a financing statement or related record for a transaction that involves collateral that is located within the boundaries of an Indian reservation and that is subject to the laws of the governing body of the tribe or tribes of the Indian reservation.

**History:** **En. Sec. 95, Ch. 305, L. 1999; amd. Sec. 18, Ch. 179, L. 2001; amd. Secs. 14, 29(1), Ch. 396, L. 2001; Sec. 30-9-545, MCA 1999; redes. 30-9A-525 by Code Commissioner, 2001; amd. Sec. 1, Ch. 568, L. 2023.**

**30-9A-526. Filing-office rules.** (1) The secretary of state shall adopt and publish rules to carry out the provisions of this chapter. The filing-office rules must be:

(a) consistent with this chapter; and

(b) adopted and published in accordance with Title 2, chapter 4.

(2) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules shall:

(a) consult with filing offices in other jurisdictions that enact substantially this part;

(b) consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

(c) take into consideration the rules and practices of and the technology used by filing offices in other jurisdictions that enact substantially this part.

**History:** **En. Sec. 96, Ch. 305, L. 1999; Sec. 30-9-546, MCA 1999; redes. 30-9A-526 by Code Commissioner, 2001.**

**30-9A-527. Duty to report.** If there have been any changes affecting filing-office rules, the secretary of state shall report to the state administration and veterans' affairs interim committee by September 15 in the year preceding the regular legislative session on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization and the reasons for these variations.

**History:** **En. Sec. 97, Ch. 305, L. 1999; Sec. 30-9-547, MCA 1999; redes. 30-9A-527 by Code Commissioner, 2001; amd. Sec. 7, Ch. 155, L. 2013.**

## Part 6
## Default

**30-9A-601. Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in 30-9A-602, those provided by agreement of the parties. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under 30-7-107, 30-9A-104, 30-9A-105, 30-9A-106, 30-9A-107, or 30-9A-107A has the rights and duties provided in 30-9A-207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in 30-9A-605 and subsection (7) of this section, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest or agricultural lien in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(7) Except as otherwise provided in 30-9A-607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

**History: En. Sec. 98, Ch. 305, L. 1999; Sec. 30-9-601, MCA 1999; redes. 30-9A-601 by Code Commissioner, 2001; amd. Sec. 85, Ch. 575, L. 2005; amd. Sec. 81, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 81, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-602. Waiver and variance of rights and duties.** Except as provided in 30-9A-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) 30-9A-207(2)(d)(iii), which deals with use and operation of the collateral by the secured party;

(2) 30-9A-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) 30-9A-607(3), which deals with collection and enforcement of collateral;

(4) 30-9A-608(1) and 30-9A-615(3) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) 30-9A-608(1) and 30-9A-615(4) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) 30-9A-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) 30-9A-610(2), 30-9A-611, 30-9A-613, and 30-9A-614, which deal with disposition of collateral;

(8) 30-9A-615(6), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) 30-9A-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) 30-9A-620 through 30-9A-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) 30-9A-623, which deals with redemption of collateral;

(12) 30-9A-624, which deals with permissible waivers; and

(13) 30-9A-625 and 30-9A-626, which deal with the secured party's liability for failure to comply with this chapter.

**History: En. Sec. 99, Ch. 305, L. 1999; Sec. 30-9-602, MCA 1999; redes. 30-9A-602 by Code Commissioner, 2001.**

**30-9A-603. Agreement on standards concerning rights and duties.** (1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party if the standards are not manifestly unreasonable.

(2) Subsection (1) does not apply to the duty under 30-9A-609 to refrain from breaching the peace.

**History: En. Sec. 100, Ch. 305, L. 1999; Sec. 30-9-603, MCA 1999; redes. 30-9A-603 by Code Commissioner, 2001.**

**30-9A-604. Procedure if security agreement covers real property or fixtures.** (1) If a security agreement covers both personal and real property, a secured party may proceed:

(a) under this part as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the personal property and the real property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of this part do not apply.

(2) Subject to subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) under this part; or

(b) in accordance with the rights and remedies with respect to real property, in which case the other provisions of this part do not apply.

(3) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, on default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**History: En. Sec. 101, Ch. 305, L. 1999; Sec. 30-9-604, MCA 1999; redes. 30-9A-604 by Code Commissioner, 2001.**

**30-9A-605. Unknown debtor or secondary obligor.** (1) Except as provided in subsection (2), a secured party does not owe a duty based on its status as secured party:

(a) to a person that is a debtor or obligor, unless the secured party knows:

(i) that the person is a debtor or obligor;

(ii) the identity of the person; and

(iii) how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against the person unless the secured party knows:

(i) that a person is a debtor; and

(ii) the identity of the person.

(2) A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(a) the person is a debtor or obligor; and

(b) the secured party knows that the information in subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**History: En. Sec. 102, Ch. 305, L. 1999; Sec. 30-9-605, MCA 1999; redes. 30-9A-605 by Code Commissioner, 2001; amd. Sec. 82, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 82, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-606. Time of default for agricultural lien.** For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

**History: En. Sec. 103, Ch. 305, L. 1999; Sec. 30-9-606, MCA 1999; redes. 30-9A-606 by Code Commissioner, 2001.**

**30-9A-607. Collection and enforcement by secured party.** (1) If so agreed, and in any event on default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) may take any proceeds to which the secured party is entitled under 30-9A-315;

(c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights and remedies of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(d) if it holds a security interest in a deposit account perfected by control under 30-9A-104(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(e) if it holds a security interest in a deposit account perfected by control under 30-9A-104(1)(b) or (1)(c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce nonjudicially any mortgage, the secured party may record in the office in which the mortgage is recorded:

(a) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(b) the secured party's sworn affidavit in recordable form stating that:

(i) a default has occurred with respect to the obligation secured by the mortgage; and

(ii) the secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorneys fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

**History: En. Sec. 104, Ch. 305, L. 1999; Sec. 30-9-607, MCA 1999; redes. 30-9A-607 by Code Commissioner, 2001; amd. Sec. 18, Ch. 75, L. 2013.**

**30-9A-608. Application of proceeds of collection or enforcement — liability for deficiency and right to surplus.** (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under 30-9A-607 in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subsection (1)(a)(iii).

(c) A secured party need not apply or pay over for application the noncash proceeds of collection and enforcement under 30-9A-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

**History: En. Sec. 105, Ch. 305, L. 1999; amd. Sec. 19, Ch. 179, L. 2001; Sec. 30-9-608, MCA 1999; redes. 30-9A-608 by Code Commissioner, 2001; amd. Sec. 83, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 83, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-609. Secured party's right to take possession after default.** (1) After default, a secured party:

(a) may take possession of the collateral; and

(b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under 30-9A-610.

(2) A secured party may proceed under subsection (1):

(a) pursuant to judicial process; or

(b) without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

**History: En. Sec. 106, Ch. 305, L. 1999; Sec. 30-9-609, MCA 1999; redes. 30-9A-609 by Code Commissioner, 2001.**

**30-9A-610. Disposition of collateral after default.** (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) at a public disposition; or

(b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

**History: En. Sec. 107, Ch. 305, L. 1999; Sec. 30-9-610, MCA 1999; redes. 30-9A-610 by Code Commissioner, 2001.**

**30-9A-611. Notification before disposition of collateral.** (1) In this section, "notification date" means the earlier of the date on which:

(a) a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under 30-9A-610 shall send to the persons specified in subsection (3) a reasonable signed notification of disposition.

(3) To comply with subsection (2), the secured party shall send a signed notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(ii) any other secured party that, 10 days before the notification date, held a security interest in or agricultural lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(iii) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 30-9A-311(1).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed in subsection (3)(c)(ii) if:

(a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(ii); and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent a signed notification of disposition to each secured party named in that response and whose financing statement covered the collateral.

**History: En. Sec. 108, Ch. 305, L. 1999; Sec. 30-9-611, MCA 1999; redes. 30-9A-611 by Code Commissioner, 2001; amd. Sec. 84, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 84, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-612. Timeliness of notification before disposition of collateral.** (1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

**History: En. Sec. 109, Ch. 305, L. 1999; Sec. 30-9-612, MCA 1999; redes. 30-9A-612 by Code Commissioner, 2001.**

**30-9A-613. Contents and form of notification before disposition of collateral — general.** (1) Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public disposition or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information set forth in subsection (1) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subsection (1) are sufficient, even if the notification includes:

(i) information not specified by that subsection; or

(ii) minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(2) The following form of notification and the form appearing in 30-9A-614(1)(c), when completed in accordance with the instructions in 30-9A-614(2) and subsection (3) of this section, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

[1] Name of any debtor that is not an addressee: (Name of each debtor)

[2] We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)
(Time)
(Place)

[3] We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

[4] You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

[5] If you request an accounting you must pay a charge of $ (amount).

[6] You may request an accounting by calling us at (telephone number).

[End of Form]

(3) The following instructions apply to the form of notification in subsection (2):

(a) The instructions in this subsection (3) refer to the numbers in brackets before items in the form of notification in subsection (2). Do not include the numbers or brackets in the notification. The numbers and brackets are used only for the purpose of these instructions.

(b) Include and complete item [1] only if there is a debtor that is not an addressee of the notification and list the name or names.

(c) Include and complete either item [2], if the notification relates to a public disposition of the collateral, or item [3], if the notification relates to a private disposition of the collateral. If item [2] is included, include the words "to the highest qualified bidder" only if applicable.

(d) Include and complete items [4] and [6].

(e) Include and complete item [5] only if the sender will charge the recipient for an accounting.

**History: En. Sec. 110, Ch. 305, L. 1999; amd. Sec. 20, Ch. 179, L. 2001; Sec. 30-9-613, MCA 1999; redes. 30-9A-613 by Code Commissioner, 2001; amd. Sec. 85, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 85, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-614. Contents and form of notification before disposition of collateral — consumer-goods transaction.** (1) In a consumer-goods transaction, the following rules apply:

(a) A notification of disposition must provide the following information:

(i) the information specified in 30-9A-613(1);

(ii) a description of any liability for a deficiency of the person to which the notification is sent;

(iii) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under 30-9A-623 is available; and

(iv) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(b) A particular phrasing of the notification is not required.

(c) The following form of notification, when completed in accordance with the instructions in subsection (2), provides sufficient information:

(Name and address of secured party)
(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral) because you broke promises in our agreement.

[1] We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)
(Time)
(Place)

You may attend the sale and bring bidders if you want.

[2] We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

[3] The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

[4] You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

[5] If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us, [6] call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) [7] and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

[8] We will charge you $ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last 6 months.

[9] If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

[10] We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

[End of Form]

(d) A notification in the form of subsection (1)(c) is sufficient, even if additional information appears at the end of the form.

(e) A notification in the form of subsection (1)(c) is sufficient, even if it includes errors in information not required by subsection (1)(a), unless the error is misleading with respect to rights arising under this chapter.

(f) If a notification under this section is not in the form of subsection (1)(c), law other than this chapter determines the effect of including information not required by subsection (1)(a).

(2) The following instructions apply to the form of notification in subsection (1)(c):

(a) The instructions in this subsection refer to the numbers in brackets before items in the form of notification in subsection (1)(c). Do not include the numbers or brackets in the notification. The numbers and brackets are used only for the purpose of these instructions.

(b) Include and complete either item [1], if the notification relates to a public disposition of the collateral, or item [2], if the notification relates to a private disposition of the collateral.

(c) Include and complete items [3], [4], [5], [6], and [7].

(d) In item [5], include and complete any one of the three alternative methods for the explanation—writing, writing or electronic record, or electronic record.

(e) In item [6], include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication—writing or electronic communication—for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(f) In item [7], include and complete the method or methods for the explanation—writing, writing or electronic record, or electronic record—included in item [5].

(g) Include and complete item [8] only if a written explanation is included in item [5] as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(h) In item [9], include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication—electronic communication—for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(i) If item [10] does not apply, insert "None" after "agreement:".

**History: En. Sec. 111, Ch. 305, L. 1999; Sec. 30-9-614, MCA 1999; redes. 30-9A-614 by Code Commissioner, 2001; amd. Sec. 86, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 86, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-615. Application of proceeds of disposition — liability for deficiency and right to surplus.** (1) A secured party shall apply or pay over for application the cash proceeds of disposition under 30-9A-610 in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest a signed demand for proceeds before distribution of the proceeds is completed; and

(ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under 30-9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the requirements of this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

**History: En. Sec. 112, Ch. 305, L. 1999; amd. Sec. 21, Ch. 179, L. 2001; Sec. 30-9-615, MCA 1999; redes. 30-9A-615 by Code Commissioner, 2001; amd. Sec. 87, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 87, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-616. Explanation of calculation of surplus or deficiency.** (1) In this section, the following definitions apply:

(a) "Explanation" means a record that:

(i) states the amount of the surplus or deficiency;

(ii) provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency;

(iii) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest rebates, and expenses may affect the amount of the surplus or deficiency; and

(iv) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) "Request" means a record:

(i) signed by a debtor or consumer obligor;

(ii) requesting that the recipient provide an explanation; and

(iii) sent after disposition of the collateral under 30-9A-610.

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under 30-9A-615, the secured party shall:

(a) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(i) before or when the secured party accounts to the debtor and pays any surplus or first makes demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(ii) within 14 days after receipt of a request; or

(b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(3) To comply with subsection (1)(a)(ii), an explanation must provide the following information in the following order:

(a) the aggregate amount of obligations secured by the security interest under which the disposition was made, and if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(i) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(ii) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(b) the amount of proceeds of the disposition;

(c) the aggregate amount of the obligations after deducting the amount of proceeds;

(d) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney fees secured by the collateral that are known to the secured party and relate to the current disposition;

(e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subsection (3)(a); and

(f) the amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1)(a) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding $25 for each additional response.

**History: En. Sec. 113, Ch. 305, L. 1999; Sec. 30-9-616, MCA 1999; redes. 30-9A-616 by Code Commissioner, 2001; amd. Sec. 88, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 88, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-617. Rights of transferee of collateral.** (1) A secured party's disposition of collateral after default:

(a) transfers to a transferee for value all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c) discharges any subordinate security interest or other lien.

(2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with the requirements of this chapter or any judicial proceedings.

(3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to:

(a) the debtor's rights in the collateral;

(b) the security interest or agricultural lien under which the disposition is made; and

(c) any security interest or other lien.

**History: En. Sec. 114, Ch. 305, L. 1999; Sec. 30-9-617, MCA 1999; redes. 30-9A-617 by Code Commissioner, 2001.**

**30-9A-618. Rights and duties of certain secondary obligors.** (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1):

(a) is not a disposition of collateral under 30-9A-610; and

(b) relieves the secured party of further duties under this chapter.

**History: En. Sec. 115, Ch. 305, L. 1999; Sec. 30-9-618, MCA 1999; redes. 30-9A-618 by Code Commissioner, 2001.**

**30-9A-619. Transfer of record or legal title.** (1) In this section, "transfer statement" means a record signed by a secured party stating:

(a) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(b) that the secured party has exercised its postdefault remedies with respect to the collateral;

(c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(d) the name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate of title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(a) accept the transfer statement;

(b) promptly amend its records to reflect the transfer; and

(c) if applicable, issue a new appropriate certificate of title in the name of transferee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

**History:** **En. Sec. 116, Ch. 305, L. 1999; Sec. 30-9-619, MCA 1999; redes. 30-9A-619 by Code Commissioner, 2001; amd. Sec. 89, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 89, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-620. Acceptance of collateral in full or partial satisfaction — compulsory disposition of collateral.** (1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under subsection (3);

(b) the secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal signed by:

(i) a person to which the secured party was required to send a proposal under 30-9A-621; or

(ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(d) subsection (5) does not require the secured party to dispose of the collateral.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless:

(a) the secured party consents to the acceptance in a signed record or sends a proposal to the debtor; and

(b) the conditions of subsection (1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a notification of objection signed by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to which the proposal was sent pursuant to 30-9A-621, within 20 days after notification was sent to that person; and

(b) in other cases:

(i) within 20 days after the last notification was sent pursuant to 30-9A-621; or

(ii) if a notification was not sent, before the debtor consents to the acceptance under subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to 30-9A-610 within the time specified in subsection (6) if:

(a) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) 60% of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral:

(a) within 90 days after taking possession; or

(b) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

**History:** **En. Sec. 117, Ch. 305, L. 1999; Sec. 30-9-620, MCA 1999; redes. 30-9A-620 by Code Commissioner, 2001; amd. Sec. 90, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 90, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-621. Notification of proposal to accept collateral.** (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(a) any person from which the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(b) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 30-9A-311(1).

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1).

**History:** **En. Sec. 118, Ch. 305, L. 1999; Sec. 30-9-621, MCA 1999; redes. 30-9A-621 by Code Commissioner, 2001; amd. Sec. 91, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 91, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-622. Effect of acceptance of collateral.** (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discharges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1) whether or not the secured party is required to send or does send its proposal to the holder of the interest. However, any person to which the secured party was required to send, but did not send, its proposal has the remedy provided by 30-9A-625(2).

**History:** **En. Sec. 119, Ch. 305, L. 1999; Sec. 30-9-622, MCA 1999; redes. 30-9A-622 by Code Commissioner, 2001.**

**30-9A-623. Right to redeem collateral.** (1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender:

(a) fulfillment of all obligations secured by the collateral; and

(b) the reasonable expenses and attorneys fees described in 30-9A-615(1)(a).

(3) A redemption may occur at any time before a secured party:

(a) has collected collateral under 30-9A-607;

(b) has disposed of collateral or entered into a contract for its disposition under 30-9A-610; or

(c) has accepted collateral in full or partial satisfaction of the obligation it secures under 30-9A-622.

**History:** **En. Sec. 120, Ch. 305, L. 1999; Sec. 30-9-623, MCA 1999; redes. 30-9A-623 by Code Commissioner, 2001.**

**30-9A-624. Waiver.** (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under 30-9A-611 only by an agreement to that effect entered into and signed after default.

(2) A debtor may waive the right to require disposition of collateral under 30-9A-620(5) only by an agreement to that effect entered into and signed after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 30-9A-623 only by an agreement to that effect entered into and signed after default.

**History: En. Sec. 121, Ch. 305, L. 1999; Sec. 30-9-624, MCA 1999; redes. 30-9A-624 by Code Commissioner, 2001; amd. Sec. 92, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 92, Ch. 200, L. 2025. Amendment effective October 1, 2025.

**30-9A-625. Remedies for secured party's failure to comply with chapter.** (1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in 30-9A-628:

(a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under 30-9A-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 30-9A-626 may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from:

(a) a secured party that fails to comply with 30-9A-208;

(b) a secured party that fails to comply with 30-9A-209;

(c) a person that files a record that the person is not entitled to file under 30-9A-509(1);

(d) a secured party that fails to cause the secured party of record to file or send a termination statement as required by 30-9A-513(1) or (3);

(e) a secured party that fails to comply with 30-9A-616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) a secured party that fails to comply with 30-9A-616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under 30-9A-210. A recipient of a request under 30-9A-210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 30-9A-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

**History: En. Sec. 122, Ch. 305, L. 1999; amd. Sec. 22, Ch. 179, L. 2001; Sec. 30-9-625, MCA 1999; redes. 30-9A-625 by Code Commissioner, 2001.**

**30-9A-626. Action in which deficiency or surplus is in issue.** (1) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in 30-9A-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys fees exceeds the greater of:

(i) the proceeds of the collection, enforcement, disposition, or acceptance; or

(ii) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(d) For purposes of subsection (1)(c)(ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under 30-9A-615(6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The limitation of the rules in subsection (1) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

**History:** **En. Sec. 123, Ch. 305, L. 1999; Sec. 30-9-626, MCA 1999; redes. 30-9A-626 by Code Commissioner, 2001.**

**30-9A-627. Determination of whether conduct was commercially reasonable.** (1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(a) in a judicial proceeding;

(b) by a bona fide creditors' committee;

(c) by a representative of creditors; or

(d) by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

**History:** **En. Sec. 124, Ch. 305, L. 1999; Sec. 30-9-627, MCA 1999; redes. 30-9A-627 by Code Commissioner, 2001.**

**30-9A-628. Nonliability and limitation on liability of secured party — liability of secondary obligor.** (1) Subject to subsection (6), unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(a) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(b) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(2) Subject to subsection (6), a secured party is not liable because of its status as a secured party:

(a) to a person that is a debtor or obligor, unless the secured party knows:

(i) that the person is a debtor or obligor;

(ii) the identity of the person; and

(iii) how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(i) that the person is a debtor; and

(ii) the identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on:

(a) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(b) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under 30-9A-625(3)(b) for its failure to comply with 30-9A-616.

(5) A secured party is not liable under 30-9A-625(3)(b) more than once with respect to any one secured obligation.

(6) Subsections (1) and (2) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(a) the person is a debtor or obligor; and

(b) the secured party knows that the information in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**History:** **En. Sec. 125, Ch. 305, L. 1999; Sec. 30-9-628, MCA 1999; redes. 30-9A-628 by Code Commissioner, 2001; amd. Sec. 93, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 93, Ch. 200, L. 2025. Amendment effective October 1, 2025.

## Part 7
## 1999 Transition

**30-9A-701 and 30-9A-702 reserved.**

**30-9A-703. Security interest perfected before July 1, 2001.** (1) If a security interest is enforceable and has priority over the rights of a lien creditor immediately before July 1, 2001, and the applicable requirements for enforceability and perfection under this chapter are satisfied without further action on July 1, 2001, the security interest is a perfected security interest under this chapter.

(2) Except as otherwise provided in 30-9A-705, if a security interest is a perfected security interest under former chapter 9 immediately before July 1, 2001, but the applicable requirements for enforceability or perfection under this chapter are not satisfied on July 1, 2001, the security interest:

(a) is a perfected security interest for 1 year after July 1, 2001;

(b) remains enforceable thereafter only if the security interest becomes enforceable under 30-9A-203 before the year expires; and

(c) remains perfected thereafter only if the applicable requirements for perfection under this chapter are satisfied before the year expires.

**History:** **En. Sec. 162, Ch. 305, L. 1999.**

**30-9A-704. Security interest unperfected before July 1, 2001.** A security interest that is enforceable immediately before July 1, 2001, but that is subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest for 1 year after July 1, 2001;

(2) remains enforceable thereafter if the security interest becomes enforceable under 30-9A-203 on July 1, 2001, or within 1 year thereafter; and

(3) becomes perfected:

(a) without further action, on July 1, 2001, if the applicable requirements for perfection under this chapter are satisfied before or at that time; or

(b) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**History:** **En. Sec. 163, Ch. 305, L. 1999.**

**30-9A-705. Effectiveness of action taken before effective date of act.** (1) If action other than the filing of a financing statement is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before July 1, 2001, the action is sufficient to perfect a security interest that attaches under this chapter within 1 year after July 1, 2001. An attached security interest becomes unperfected 1 year after July 1, 2001, unless the security interest becomes a perfected security interest under this chapter before the expiration of that period.

(2) The filing of a financing statement before July 1, 2001, is sufficient to perfect a security interest that attaches after July 1, 2001, to the extent the filing would satisfy the applicable requirements for perfection under this chapter.

(3) This chapter does not render ineffective an effective financing statement that is filed before this chapter takes effect in accordance with the law of the jurisdiction governing perfection as provided in former 30-9-103. However, except as otherwise provided in subsection (4):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(ii) 5 years after July 1, 2001; and

(b) a continuation statement filed after July 1, 2001 does not continue the effectiveness of the financing statement.

(4) A continuation statement filed after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A, part 3, is effective to continue the effectiveness of a financing statement filed in that jurisdiction before July 1, 2001.

(5) Subsection (3)(b) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former 30-9-103 only to the extent that Title 30, chapter 9A, part 3, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(6) This chapter does not render ineffective an effective financing statement that was filed before July 1, 2001, and in the office specified in former 30-9-401. However, except as otherwise provided in subsection (7):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under former chapter 9; or

(ii) 5 years after July 1, 2001; and

(b) a continuation statement filed after July 1, 2001, does not continue the effectiveness of the financing statement.

(7) A continuation statement filed after July 1, 2001, and in the office specified in 30-9A-501 is effective to continue the effectiveness of a financing statement filed in that office before July 1, 2001.

(8) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Title 30, chapter 9A, part 5, for an initial financing statement.

**History:** **En. Sec. 164, Ch. 305, L. 1999; amd. Sec. 23, Ch. 179, L. 2001.**

**30-9A-706. When initial financing statement suffices as continuation statement.** (1) The effectiveness of a financing statement filed before July 1, 2001, may be continued by filing in the office specified in 30-9A-501 an initial financing statement complying with the requirements of subsection (2) if:

(a) the filing of a financing statement in that office is effective to perfect a security interest; and

(b) the preeffective-date financing statement was filed in an office in another state or another office in this state.

(2) To be effective for purposes of subsection (1), an initial financing statement must:

(a) satisfy the requirements of Title 30, chapter 9A, part 5, for an initial financing statement;

(b) identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) indicate that the preeffective-date financing statement remains effective.

**History:** **En. Sec. 165, Ch. 305, L. 1999.**

**30-9A-707. Amendment of preeffective-date financing statement.** (1) In this section, "preeffective-date financing statement" means a financing statement filed before July 1, 2001.

(2) After July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A, part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after July 1, 2001, only if:

(a) the preeffective-date financing statement and an amendment are filed in the office specified in 30-9A-501;

(b) an amendment is filed in the office specified in 30-9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies 30-9A-705(3); or

(c) an initial financing statement that provides the information as amended and satisfies 30-9A-705(3), is filed in the office specified in 30-9A-501.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under 30-9A-705(4) and (5) or 30-9A-706.

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated after July 1, 2001, by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies 30-9A-705(3) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A, part 3, as the office in which to file a financing statement.

**History:** **En. Sec. 24, Ch. 179, L. 2001.**

**30-9A-708. Persons entitled to file initial financing statement or continuation of statement.** A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(a) to continue the effectiveness of a financing statement filed before July 1, 2001; or

(b) to perfect or continue the perfection of a security interest.

**History:** **En. Sec. 166, Ch. 305, L. 1999.**

**30-9A-709. Priority.** (1) Former chapter 9 determines the priority of conflicting claims to collateral if the relative priorities of the parties were fixed before July 1, 2001. In other cases, this chapter determines priority.

(2) For purposes of 30-9A-322(1), the priority of a security interest that becomes a perfected security interest under 30-9A-706 dates from the time the applicable requirements for perfection are satisfied. This subsection does not apply to conflicting security interests each of which becomes a perfected security interest under 30-9A-706.

**History:** **En. Sec. 167, Ch. 305, L. 1999.**

## Part 8
## 2013 Transition

**30-9A-801 and 30-9A-802 reserved.**

**30-9A-803. Security interest perfected before effective date.** (1) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this chapter if, on July 1, 2013, the applicable requirements for attachment and perfection under this chapter are satisfied without further action.

(2) Except as otherwise provided in 30-9A-804, if, immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter are satisfied within 1 year after July 1, 2013.

**History:** **En. Sec. 19, Ch. 75, L. 2013.**

**30-9A-804. Security interest unperfected before effective date.** A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) without further action on July 1, 2013, if the applicable requirements for perfection under this chapter are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**History:** **En. Sec. 20, Ch. 75, L. 2013.**

**30-9A-805. Effectiveness of action taken before effective date.** (1) The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter.

(2) This chapter does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former chapter 9A. However, except as otherwise provided in 30-9A-806 and subsections (3) and (4) of this section, the financing statement ceases to be effective:

(a) if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had Chapter 75, Laws of 2013, not taken effect; or

(b) if the financing statement is filed in another jurisdiction, at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(ii) June 30, 2018.

(3) The filing of a continuation statement after July 1, 2013, does not continue the effectiveness of a financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this chapter, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(4) Subsection (2)(b)(ii) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former chapter 9A, only to the extent that this chapter provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(5) A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed after July 1, 2013, is effective only to the extent that it satisfies the requirements of Title 30, chapter 9A, part 5, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of 30-9A-503(1)(b). A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of 30-9A-503(1)(c).

**History: En. Sec. 21, Ch. 75, L. 2013.**

**30-9A-806. When initial financing statement suffices to continue effectiveness of financing statement.** (1) The filing of an initial financing statement in the office specified in 30-9A-501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(a) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter.

(b) the pre-effective-date financing statement was filed in an office in another state; and

(c) the initial financing statement satisfies subsection (3).

(2) The filing of an initial financing statement under subsection (1) continues the effectiveness of the pre-effective-date financing statement:

(a) if the initial financing statement is filed before July 1, 2013, for the period provided in former 30-9A-515 with respect to an initial financing statement; and

(b) if the initial financing statement is filed after July 1, 2013, for the period provided in 30-9A-515 with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1), an initial financing statement must:

(a) satisfy the requirements of Title 30, chapter 9A, part 5, for an initial financing statement;

(b) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) indicate that the pre-effective-date financing statement remains effective.

**History: En. Sec. 22, Ch. 75, L. 2013.**

**30-9A-807. Amendment of pre-effective-date financing statement.** (1) In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2013.

(2) After July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2013, only if:

(a) the pre-effective-date financing statement and an amendment are filed in the office specified in section 30-9A-501;

(b) an amendment is filed in the office specified in section 30-9A-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies 30-9A-806(3); or

(c) an initial financing statement that provides the information as amended and satisfies 30-9A-806(3) is filed in the office specified in 30-9A-501.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under 30-9A-805(3) and (5) or 30-9A-806.

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed unless an initial financing statement that satisfies 30-9A-806(3) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Title 30, chapter 9A, as the office in which to file a financing statement.

**History: En. Sec. 23, Ch. 75, L. 2013.**

**30-9A-808. Person entitled to file initial financing statement or continuation statement.** A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(a) to continue the effectiveness of a financing statement filed before July 1, 2013; or

(b) to perfect or continue the perfection of a security interest.

**History: En. Sec. 24, Ch. 75, L. 2013.**

**30-9A-809. Priority.** This chapter determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, Title 30, former chapter 9A, determines priority.

**History: En. Sec. 25, Ch. 75, L. 2013.**

## Part 9
## 2025 Transitional Provisions

**Part Compiler's Comments**

*Effective Date:* This part is effective October 1, 2025.

*Codification Change:* Section 112, Ch. 200, L. 2025, provided that sections 102 through 107 were to be codified as a new part in Title 30, chapter 9A. The Code Commissioner has instead codified sections 104 through 109 as a new part in Title 30, chapter 9A, to correct an apparent error.

**30-9A-901. Savings clause.** (1) Except as provided in this part, Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, and Title 30, chapter 12A, part 1, apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before October 1, 2025.

(2) Except as provided in subsection (3) and 30-9A-902 through 30-9A-906:

(a) a transaction, lien, or interest in property that was validly entered into, created, or transferred before October 1, 2025, and was not governed by the Uniform Commercial Code, but would be subject to Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, or Title 30, chapter 12A, part 1, if it had been entered into, created, or transferred on or after October 1, 2025, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after October 1, 2025; and

(b) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by Chapter 200, Laws of 2025, or by the law that would apply if Chapter 200, Laws of 2025, had not taken effect.

(3) Chapter 200, Laws of 2025, does not affect an action, case, or proceeding commenced before October 1, 2025.

**History: En. Sec. 104, Ch. 200, L. 2025.**

**30-9A-902. Security interest perfected before effective date.** (1) A security interest that is enforceable and perfected immediately before October 1, 2025, is a perfected security interest under Chapter 200, Laws of 2025, if, on October 1, 2025, the requirements for enforceability and perfection under Chapter 200, Laws of 2025, are satisfied without further action.

(2) If a security interest is enforceable and perfected immediately before October 1, 2025, but the requirements for enforceability or perfection under Chapter 200, Laws of 2025, are not satisfied on October 1, 2025, the security interest:

(a) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before October 1, 2025, or the adjustment date;

(b) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under 30-9A-203, as amended by Chapter 200, Laws of 2025, before the adjustment date; and

(c) remains perfected thereafter only if the requirements for perfection under Chapter 200, Laws of 2025, are satisfied before the time specified in subsection (2)(a).

**History:** **En. Sec. 105, Ch. 200, L. 2025.**

**30-9A-903. Security interest unperfected before effective date.** A security interest that is enforceable immediately before October 1, 2025, but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under 30-9A-203, as amended by Chapter 200, Laws of 2025, on October 1, 2025, or before the adjustment date; and

(3) becomes perfected:

(a) without further action, on October 1, 2025, if the requirements for perfection under Chapter 200, Laws of 2025, are satisfied before or at that time; or

(b) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

**History:** **En. Sec. 106, Ch. 200, L. 2025.**

**30-9A-904. Effectiveness of actions taken before effective date.** (1) If action, other than the filing of a financing statement, is taken before October 1, 2025, and the action would have resulted in perfection of the security interest had the security interest become enforceable before October 1, 2025, the action is effective to perfect a security interest that attaches under Chapter 200, Laws of 2025, before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under Chapter 200, Laws of 2025, before the adjustment date.

(2) The filing of a financing statement before October 1, 2025, is effective to perfect a security interest on October 1, 2025, to the extent the filing would satisfy the requirements for perfection under Chapter 200, Laws of 2025.

(3) The taking of an action before October 1, 2025, is sufficient for the enforceability of a security interest on October 1, 2025, if the action would satisfy the requirements for enforceability under Chapter 200, Laws of 2025.

**History:** **En. Sec. 107, Ch. 200, L. 2025.**

**30-9A-905. Priority.** (1) Subject to subsections (2) and (3), Chapter 200, Laws of 2025, determines the priority of conflicting claims to collateral.

(2) Subject to subsection (3), if the priorities of claims to collateral were established before October 1, 2025, Title 30, chapter 9A, as in effect before October 1, 2025, determines priority.

(3) On the adjustment date, to the extent the priorities determined by Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, modify the priorities established before October 1, 2025, the priorities of claims to chapter 12A property established before October 1, 2025, cease to apply.

**History:** **En. Sec. 108, Ch. 200, L. 2025.**

**30-9A-906. Priority of claims when priority rules of Title 30, chapter 9A, do not apply.** (1) Subject to subsections (2) and (3), Title 30, chapter 12A, part 1, determines the priority of conflicting claims to chapter 12A property when the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply.

(2) Subject to subsection (3), when the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply and the priorities of claims to chapter 12A property were established before October 1, 2025, law other than Title 30, chapter 12A, part 1, determines priority.

(3) When the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply, to the extent the priorities determined by Chapter 200, Laws of 2025, modify the priorities established before October 1, 2025, the priorities of claims to chapter 12A property established before October 1, 2025, cease to apply on the adjustment date.

**History:** **En. Sec. 109, Ch. 200, L. 2025.**

# CHAPTER 10
# SECURITIES REGULATION

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**Chapter Cross-References**

State Auditor, Title 2, ch. 15, part 6.
Registration of public obligations, Title 17, ch. 5, part 11.
Uniform Commercial Code — investment securities, Title 30, ch. 8.

## Part 1
## General Application

**30-10-101. Short title.** Parts 1 through 3 of this chapter may be cited as the "Securities Act of Montana".

**History: En. Sec. 2, Ch. 251, L. 1961; R.C.M. 1947, 15-2002.**

**30-10-102. Policy.** Parts 1 through 3 of this chapter shall be construed to:

(1) protect the investor, persons engaged in securities transactions, and the public interest;
(2) promote uniformity among the states; and
(3) encourage, promote, and facilitate capital investment in Montana.

**History: En. Sec. 3, Ch. 251, L. 1961; R.C.M. 1947, 15-2003; amd. Sec. 1, Ch. 322, L. 1983.**

**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gemstone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) A federal covered adviser is not an investment adviser as defined in subsection (12).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Financial exploitation" means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a vulnerable person; or

(b) an act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable person, to:

(i) obtain control through deception, intimidation, fraud, menace, or undue influence over the vulnerable person's money, assets, or property to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property; or

(ii) convert money, assets, or property of the vulnerable person to deprive the vulnerable person of the ownership, use, benefit, or possession of the vulnerable person's money, assets, or property.

(11) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(12) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (12)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (12)(a) to others for compensation.

(c) The term does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (12)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (12)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (12) as the commissioner may by rule or order designate.

(13) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (13)(a) of this section is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(14) “Issuer” means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(15) “Nonissuer” means not directly or indirectly for the benefit of the issuer.

(16) “Offer” or “offer to sell” includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(17) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(18) “Precious metal” means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(19) “Qualified individual” means a person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

(20) “Registered broker-dealer” means a broker-dealer registered pursuant to 30-10-201.

(21) “Sale” or “sell” includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(22) (a) “Salesperson” means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. The term includes an individual who supervises another individual who falls within this definition. The term also includes but is not limited to the individual disclosed as the supervisor on a salesperson’s form U4 of the uniform application for securities industry registration or transfer. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise falls within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(23) “Securities Act of 1933”, “Securities Exchange Act of 1934”, “Energy Policy Act of 2005”, “Investment Advisors Act of 1940”, and “Investment Company Act of 1940” mean the federal statutes of those names.

(24) (a) “Security” means any:

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

(ix) certificate of interest or participation in any profit-sharing agreement;

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription;

(xii) transferable shares;

(xiii) investment contract;

(xiv) voting-trust certificate;

(xv) certificate of deposit for a security;

(xvi) viatical settlement purchase agreement;

(xvii) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or

(xviii)in general:

(A) interest or instrument commonly known as a security;

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security; or

(C) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items in this subsection (24)(a)(xviii).

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(25) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(26) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

(27) "Vulnerable person" means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss;

(c) a person who has a developmental disability as defined in 53-20-102; or

(d) a person with a mental disorder. For the purposes of this subsection (27)(d), "mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy.

**History: En. Sec. 4, Ch. 251, L. 1961; R.C.M. 1947, 15-2004; amd. Secs. 1, 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 322, L. 1983; amd. Sec. 1, Ch. 478, L. 1985; amd. Sec. 1, Ch. 269, L. 1987; amd. Sec. 1, Ch. 270, L. 1987; amd. Sec. 1, Ch. 272, L. 1987; amd. Sec. 76, Ch. 370, L. 1987; amd. Sec. 1, Ch. 249, L. 1989; amd. Sec. 1, Ch. 2, L. 1991; amd. Sec. 1, Ch. 228, L. 1991; amd. Sec. 1, Ch. 162, L. 1993; amd. Sec. 1, Ch. 239, L. 1995; amd. Sec. 135, Ch. 42, L. 1997; amd. Sec. 1, Ch. 533, L. 1997; amd. Sec. 2, Ch. 472, L. 1999; amd. Sec. 1, Ch. 156, L. 2003; amd. Sec. 2, Ch. 493, L. 2003; amd. Sec. 17, Ch. 19, L. 2011; amd. Sec. 10, Ch. 58, L. 2011; amd. Sec. 1, Ch. 28, L. 2015; amd. Sec. 5, Ch. 84, L. 2017; amd. Sec. 1, Ch. 127, L. 2021; amd. Sec. 6, Ch. 166, L. 2023.**

**30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of those entities. However, 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any of those entities that is payable solely from payments to be received in respect to property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise unless the enterprise or any security of which it is the issuer is within any of the exemptions listed in subsections (2) through (15).

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of those entities or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(a) subject to the jurisdiction of the federal surface transportation board;

(b) a registered holding company under the Energy Policy Act of 2005 or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province. A security referred to under this subsection (6)(d) includes equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection (6)(d).

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed an authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities, has had for its last fiscal year consolidated net income, before deduction for income taxes and depreciation, of at least 1½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available provided that the statements cover a fiscal period that ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee of the paper or of any renewal when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing on a stock exchange registered with the federal securities and exchange commission, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants listed or approved for listing as provided in this subsection, or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants listed or approved for listing as provided in this subsection, or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state when the issuer does not maintain a place of business in the state.

**History: En. Sec. 13, Ch. 251, L. 1961; R.C.M. 1947, 15-2013; amd. Sec. 2, Ch. 351, L. 1979; amd. Sec. 3, Ch. 322, L. 1983; amd. Sec. 2, Ch. 478, L. 1985; amd. Sec. 2, Ch. 272, L. 1987; amd. Sec. 2, Ch. 249, L. 1989; amd. Sec. 2, Ch. 228, L. 1991; amd. Sec. 2, Ch. 533, L. 1997; amd. Sec. 3, Ch. 472, L. 1999; amd. Sec. 18, Ch. 19, L. 2011; amd. Sec. 5, Ch. 151, L. 2017; amd. Sec. 4, Ch. 8, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 8, L. 2025. Amendment effective October 1, 2025.

**30-10-105. Exempt transactions — rulemaking.** Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons, other than those designated in subsection (7), during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

(16) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(17) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(18) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (18)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (18)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(19) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(20) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code or 17 CFR 230.701;

(21) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (21) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (21).

(22) an offer or sale of securities in which:

(a) the offer or sale meets the following residency requirements:

(i) it is made in this state to residents of this state;

(ii) the issuer is a business entity formed under the laws of this state and registered with the Montana secretary of state;

(iii) prior to the offer or sale, the issuer has documentary evidence to establish a reasonable basis to believe the buyer is a resident of this state; and

(iv) the offer or sale meets the intrastate exemption requirements in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. 77c(a)(11), and 17 CFR 230.147;

(b) the offer or sale meets the following payment requirements:

(i) cash and other consideration received by the issuer for all securities transactions does not exceed $1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;

(ii) the issuer does not accept more than $10,000 from a buyer unless the buyer is an accredited investor under Rule 501 SEC Regulation D, 17 CFR 230.501;

(iii) the issuer reasonably believes that all buyers are purchasing for investment and not for sale in connection with a distribution of the security;

(iv) a commission or remuneration is not paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is a registered broker-dealer or agent under this chapter; and

(v) all funds received from buyers are deposited into a bank or depository institution authorized to do business in this state and used in accordance with representations made to investors;

(c) the issuer, within 10 days of any solicitation or within 15 days after the first sale of the security pursuant to this exemption, whichever occurs first, provides to the commissioner in a form prescribed by the commissioner notice that:

(i) specifies that the issuer is conducting an offering in reliance upon this exemption;

(ii) identifies the issuer;

(iii) lists all persons involved in the offer and sale of securities on behalf of the issuer;

(iv) identifies the bank or other depository institution where investor funds will be deposited; and

(v) includes payment of a filing fee;

(d) the issuer does not constitute any of the following:

(i) before or after the offer or sale, an investment company as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m and 78o(d);

(ii) before or after the offer or sale, an investment adviser as defined in this chapter or a person who otherwise provides investment advice as a service or for a fee;

(iii) before the offer or sale, an individual who has been convicted within 10 years before the sale, or 5 years in the case of issuers, their predecessors, and affiliated issuers, of a felony or misdemeanor;

(iv) before or after the offer or sale, a person subject to a final order that bars the person from the business of securities, insurance, or banking, issued by any of the following:

(A) a state or federal securities regulator or similar entity;

(B) a state or federal banking authority or similar entity;

(C) a state insurance commission or similar entity;

(e) the offer or sale:

(i) can be used in conjunction with any other exemption under this chapter except the exemptions for institutional investors under subsection (8) and for controlling persons of the issuer. Sales toward controlling persons do not count toward the limitation in subsection (22)(b).

(ii) is not available if the issuer or any of its officers, controlling persons, or promoters is disqualified under any part of this chapter;

(f) prior to the sale, the issuer informed all purchasers that the securities have not been registered under this chapter and cannot be resold unless the securities are registered or qualify for an exemption from registration; and

(g) the offer or sale is not:

(i) an offering proposing to issue stock or other equity interest in a development stage company without a specific business plan or purpose;

(ii) an offering in which the issuer has indicated that its business is to enlarge in a merger or acquisition with an unidentified company or companies or other unidentified entities or persons; or

(iii) an offering without an allocation of proceeds to sufficiently identifiable properties or objectives;

(23) a transaction by a network token issuer seeking to offer or sell a network token in a transaction pursuant to the requirements of 30-24-107 and 30-24-109; or

(24) a foreign corporation that has previously issued network tokens pursuant to the requirements of 30-24-108 and 30-24-109.

**History: En. Sec. 14, Ch. 251, L. 1961; amd. Sec. 1, Ch. 185, L. 1973; R.C.M. 1947, 15-2014; amd. Sec. 3, Ch. 351, L. 1979; amd. Sec. 4, Ch. 322, L. 1983; amd. Sec. 3, Ch. 478, L. 1985; amd. Sec. 1, Ch. 479, L. 1985; amd. Sec. 2, Ch. 270, L. 1987; amd. Sec. 3, Ch. 272, L. 1987; amd. Sec. 6, Ch. 671, L. 1989; amd. Sec. 1, Ch. 46, L. 1991; amd. Sec. 1, Ch. 263, L. 1991; amd. Sec. 1, Ch. 278, L. 1991; amd. Sec. 1, Ch. 395, L. 1997; amd. Sec. 1, Ch. 130, L. 1999; amd. Sec. 4, Ch. 472, L. 1999; amd. Sec. 1, Ch. 202, L. 2003; amd. Sec. 5, Ch. 9, L. 2011; amd. Sec. 1, Ch. 163, L. 2015; amd. Sec. 1, Ch. 104, L. 2019; amd. Sec. 1, Ch. 386, L. 2019; amd. Sec. 10, Ch. 379, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 10, Ch. 379, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Injunctions, 30-10-305.

**30-10-106. Proof of exemption.** In any proceeding under parts 1 through 3 of this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

**History:** **En. Sec. 25, Ch. 251, L. 1961; R.C.M. 1947, 15-2025.**

**30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports whenever practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that an investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the commissioner, even though the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a charge of 50 cents for each page, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In a proceeding or prosecution under parts 1 through 3 of this chapter, a certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, the securities registration depository, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last-recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed.

**History:** **En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(1), (3) thru (7); amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 5, Ch. 322, L. 1983; amd. Sec. 3, Ch. 533, L. 1997; amd. Sec. 5, Ch. 416, L. 1999; amd. Sec. 5, Ch. 472, L. 1999; amd. Sec. 2, Ch. 156, L. 2003.**

**Cross-References**

Misleading filings, 30-10-302.
Unlawful representation concerning registration or exemption, 30-10-303.
Investigations and subpoenas, 30-10-304.
Injunctions, 30-10-305.

**30-10-108 and 30-10-109 reserved.**

**30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation that is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(7) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

**History: En. Sec. 1, Ch. 285, L. 1985; amd. Sec. 2, Ch. 269, L. 1987; amd. Sec. 136, Ch. 42, L. 1997; amd. Sec. 4, Ch. 533, L. 1997.**

**30-10-111 through 30-10-114 reserved.**

**30-10-115. Deposits to general fund — exceptions.** (1) Except as provided in subsection (2), all fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited in the general fund.

(2) (a) All notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor's office. The funds allocated by this subsection (2)(a) to the state special revenue account may be used only to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to notice filing under 30-10-209(1)(d) and examinations.

(b) Any fees in excess of the amount required for the purposes listed in subsection (2)(a) must be deposited in the general fund.

(c) On or after July 1, 2019, 3% of the total fees collected annually under 30-10-209(1)(b) must be deposited in the securities restitution assistance fund provided for in 30-10-1004. The remainder must be deposited in the general fund. On or after July 1, 2027, all fees collected annually under 30-10-209(1)(b) must be deposited in the general fund.

**History: En. Sec. 2, Ch. 385, L. 1985; amd. Sec. 4, Ch. 351, L. 1989; amd. Sec. 1, Ch. 462, L. 1993; amd. Sec. 64, Ch. 51, L. 1999; amd. Sec. 6, Ch. 472, L. 1999; amd. Sec. 1, Ch. 469, L. 2005; amd. Sec. 3, Ch. 227, L. 2011; amd. Sec. 1, Ch. 66, L. 2013; amd. Sec. 6, Ch. 151, L. 2017; amd. Sec. 13, Ch. 6, Sp. L. November 2017; amd. Sec. 1, Ch. 404, L. 2021.**

**30-10-116. Repealed.** Sec. 9, Ch. 351, L. 1989.
**History: En. Sec. 3, Ch. 385, L. 1985.**

**30-10-117. Repealed.** Sec. 9, Ch. 351, L. 1989.
**History: En. Sec. 4, Ch. 385, L. 1985.**

**30-10-118. Repealed.** Sec. 9, Ch. 351, L. 1989.
**History: En. Sec. 5, Ch. 385, L. 1985.**

**30-10-119. Records.** (1) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a vulnerable person to the department of public health and human services provided for in 2-15-2201 and to law enforcement, either as part of a referral to the department or to law enforcement or on request of the department or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction that may constitute financial exploitation of the vulnerable person.

(2) All records made available pursuant to this section are confidential information as defined in 2-6-1002.

(3) Nothing in this section limits or otherwise impedes the authority of the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

**History: En. Sec. 4, Ch. 84, L. 2017.**

## Part 2
## Registration

**30-10-201. Registration and notice filing requirements of broker-dealers, salespersons, investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for a person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the person is registered under parts 1 through 3 of this chapter;

(b) the person does not have a place of business in the state and the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) federal covered advisers;

(iv) broker-dealers;

(v) banks;

(vi) trust companies;

(vii) savings and loan associations;

(viii) employee benefit plans with assets of not less than $1 million;

(ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(x) other institutional investors as designated by rule or order of the commissioner; or

(c) the person does not have a place of business in this state and, during the preceding 12-month period, the person has not had more than five clients who are residents of this state, other than those clients specified in subsection (3)(b). This subsection (3)(c) also applies to broker-dealers and investment advisers.

(4) Except for federal covered advisers whose only clients are clients listed in subsection (3)(b) or who meet the requirements of subsection (3)(c), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the federal covered adviser complies with the provisions of subsection (6)(b).

(5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30, chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an investment adviser representative who maintains a place of business in this state unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in the form that the commissioner prescribes and payment of the fee prescribed in 30-10-209.

(b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) or who meet the requirements of subsection (3)(c), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, submit a notice filing to the commissioner consisting of the fee prescribed in 30-10-209 and copies of any documents filed with the securities and exchange commission that the commissioner requires by rule or order. A notice filing is effective upon its receipt by the commissioner.

(7) The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

(8) When the registration requirements are met, the commissioner shall make the registration effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

(9) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or a notice filing by a federal covered adviser:

(a) is effective until December 31 following the registration or notice filing or any other time as the commissioner may by rule adopt; and

(b) may be renewed pursuant to subsection (11).

(10) (a) The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

(b) The registration of an investment adviser representative is not effective during any period when the person is not associated with either an investment adviser registered under this act or a federal covered adviser with an effective notice filing who is specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner. When an investment adviser representative begins or terminates a connection with a federal covered adviser, the investment adviser representative shall promptly notify the commissioner.

(11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration of the registration or notice filing, an application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration or notice filing, and payment of the fee prescribed by 30-10-209. A broker-dealer who is not a member of the national association of securities dealers, inc., is required to file a financial statement of the broker-dealer within 90 days of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, every registered broker-dealer and investment adviser shall make and

keep accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner by rule or order. All required records of an investment adviser must be preserved for the period the commissioner prescribes by rule or order. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(b) The commissioner may require investment advisers who are registered or required to be registered to furnish or disseminate certain information as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(c) If information contained in any document filed with the commissioner is, or becomes, inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment.

(13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (13) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (13), and the commissioner shall vacate any order when the deficiency has been corrected; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to ensure their compliance with this act.

(14) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective unless the proceeding is instituted within 90 days after the date on which the registration became effective.

(15) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(16) Upon the entry of the order under subsection (13), the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons for the order and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification, the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(17) If the commissioner finds that a registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(18) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements established by the commissioner by rule.

(20) A person who is subject to the provisions of this section and who has passed the general securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed the examination unless the commissioner can verify electronically that the person has passed the exam.

**History: En. Sec. 6, Ch. 251, L. 1961; amd. Sec. 1, Ch. 265, L. 1977; amd. Sec. 1, Ch. 275, L. 1977; R.C.M. 1947, 15-2006; amd. Sec. 4, Ch. 137, L. 1979; amd. Sec. 4, Ch. 351, L. 1979; amd. Sec. 1, Ch. 279, L. 1981; amd. Sec. 1, Ch. 407, L. 1985; amd. Sec. 4, Ch. 478, L. 1985; amd. Sec. 3, Ch. 269, L. 1987; amd. Sec. 4, Ch. 272, L. 1987; amd. Sec. 3, Ch. 249, L. 1989; amd. Sec. 2, Ch. 2, L. 1991; amd. Sec. 2, Ch. 162, L. 1993; amd. Sec. 1, Ch. 261, L. 1995; amd. Sec. 5, Ch. 533, L. 1997; amd. Sec. 7, Ch. 472, L. 1999; amd. Sec. 1, Ch. 28, L. 2021; amd. Sec. 5, Ch. 8, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 8, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Administration, 30-10-107.
Prohibited practices, 30-10-301.
Unlawful representation concerning registration or exemption, 30-10-303.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Effect of conviction on civil rights, 46-18-801.

**30-10-202. Registration of securities.** It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless:

(1) the security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter; or

(2) for a federal covered security, the security has been filed with the commissioner pursuant to 30-10-211 and the fee prescribed in 30-10-209 has been paid.

**History: En. Sec. 7, Ch. 251, L. 1961; R.C.M. 1947, 15-2007; amd. Sec. 2, Ch. 279, L. 1981; amd. Sec. 6, Ch. 533, L. 1997.**

**Cross-References**

Uniform Commercial Code — investment securities — registration, Title 30, ch. 8, part 4.
General provisions regarding registration of securities, 30-10-206.
Unlawful representation concerning registration or exemption, 30-10-303.
Civil liabilities, 30-10-307.

**30-10-203. Registration by notification.** (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under parts 1 through 3 of this chapter:

(a) any security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(i) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(ii) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

(A) equal at least 5% of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

(B) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for 3 full fiscal years, equal at least 5% of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under parts 1 through 3 of this chapter or a predecessor law or the security being registered was originally issued pursuant to an exemption under parts 1 through 3 of this chapter or a predecessor law.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) a statement demonstrating eligibility for registration by notification;

(b) with respect to the issuer: its name, address, and form of organization, the state (or foreign jurisdiction) and the date of its organization, and the general character and location of its business;

(c) a description of the securities being registered;

(d) total amount of securities to be offered and amount of securities to be offered in this state;

(e) the price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any persons (other than as underwriting and selling discounts or commissions) and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value);

(f) names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) description of any security options outstanding or to be created in connection with the offering;

(h) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the United States securities and exchange commission;

(i) a copy of any offering circular or prospectus to be used in connection with the offering;

(j) in the case of any registration under subsection (1)(b) of this section relating to nonissuer distribution which does not also satisfy the conditions of subsection (1)(a) of this section, a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 2 years;

(k) a consent to service of process meeting the requirements of 30-10-208; and

(l) such other information as the commissioner may require.

(3) If no stop order is in effect and no proceeding is pending under 30-10-207, a registration statement by notification automatically becomes effective at noon the 10th business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

**History:** **En. Sec. 8, Ch. 251, L. 1961; R.C.M. 1947, 15-2008; amd. Sec. 3, Ch. 279, L. 1981.**

**Cross-References**

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

**30-10-204. Registration by coordination.** (1) Any security for which a registration statement has been filed under the Securities Act of 1933 or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments to those regulations, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to section 3(b) of the Securities Act of 1933, in connection with the same offering, may be registered by coordination. A registration statement under this section must contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) one copy of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations under that act, together with all amendments to that act;

(b) the amount of securities to be offered in this state;

(c) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(e) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) if the commissioner requests, any other information or copies of any other documents filed under the Securities Act of 1933;

(g) an undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment that merely delays the effective date;

(h) a consent to service of process meeting the requirements of 30-10-208; and

(i) other information that the commissioner may require.

(2) A registration statement by coordination under this section automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) no stop order is in effect and no proceeding is pending under 30-10-207;

(b) the registration statement has been on file with the commissioner for at least 10 business days; and

(c) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 business days or a shorter period that the commissioner permits by rule or otherwise and the offering is made within those limitations.

(3) The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment referred to in subsection (3), the commissioner may enter a denial order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsections (2) and (3), if the commissioner promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and posteffective amendment, the denial order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subsections (2)(b) and (2)(c). If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective, the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether the commissioner contemplates the institution of a proceeding under 30-10-207. However, this advice by the commissioner does not preclude the institution of a proceeding at any time.

**History:** **En. Sec. 9, Ch. 251, L. 1961; R.C.M. 1947, 15-2009; amd. Sec. 4, Ch. 279, L. 1981; amd. Sec. 5, Ch. 272, L. 1987; amd. Sec. 77, Ch. 370, L. 1987; amd. Sec. 900, Ch. 56, L. 2009.**

**Cross-References**

General provisions regarding registration of securities, 30-10-206.

Unlawful representation concerning registration or exemption, 30-10-303.

**30-10-205. Registration by qualification.** (1) Any security may be registered by qualification. A registration statement under this section must contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in 30-10-209:

(a) with respect to the issuer and any significant subsidiary: its name, address, form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past 5 years, the amount of securities of the issuer held by the person as of a specified date within 90 days of the filing of the registration statement, the remuneration paid to all listed persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, and subsidiaries;

(c) with respect to any person not named in subsection (1)(b) owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1)(b) other than the person's occupation;

(d) with respect to every promoter not named in subsection (1)(b), if the issuer was organized within the past 3 years: the information specified in subsection (1)(b), any amount paid to the promoter by the issuer within that period or intended to be paid to the promoter, and the consideration for any payment;

(e) the capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(f) the kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation from the offering price at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions, and other promotional fees, including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering; the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(g) the estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of the additional funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) a description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any options held or to be held by every person required to be named in subsection (1)(b), (1)(c), (1)(d), (1)(e), or (1)(g) and by any person who holds or will hold 10% or more in the aggregate of any options;

(i) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(j) any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(k) a description of any pending litigation or proceeding to which the issuer is a party and that materially affects its business or assets, including any litigation or proceeding known to be contemplated by governmental authorities;

(l) a copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(m) if the issuer issues a document showing ownership of the security being registered, a specimen or copy of the document;

(n) a copy of the issuer's articles of incorporation and bylaws as currently in effect;

(o) a copy of any indenture or other instrument covering the security to be registered;

(p) a signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(q) a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required if that business were the registrant;

(r) a consent to service of process meeting the requirements of 30-10-208; and

(s) other information that the commissioner may require.

(2) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under this section becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under

this section that a prospectus containing any designated part of the information specified in this section be sent or given to each person to whom an offer is made before or concurrently with:

(a) the first written offer made to the person, by means other than a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution;

(b) the confirmation of any sale made by or for the account of any such person;

(c) payment pursuant to any such sale; or

(d) delivery of the security pursuant to any such sale, whichever first occurs, but the commissioner shall accept for use under the requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations implementing that act.

**History:** **En. Sec. 10, Ch. 251, L. 1961; R.C.M. 1947, 15-2010; amd. Sec. 5, Ch. 279, L. 1981; amd. Sec. 901, Ch. 56, L. 2009; amd. Sec. 4, Ch. 63, L. 2015.**

**Cross-References**

General provisions regarding registration of securities, 30-10-206.
Unlawful representation concerning registration or exemption, 30-10-303.

**30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in that stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required, but may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. A registration must remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b). However, the registration must be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to the securities and must continue to be suspended so long as the proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities that are being offered and sold directly by or for the account of the issuer.

(5) A securities registration statement may not be withdrawn, whether or not the statement has become effective, without the express written consent of the commissioner.

**History:** En. Sec. 11, Ch. 251, L. 1961; amd. Sec. 1, Ch. 71, L. 1963; amd. Sec. 1, Ch. 150, L. 1977; R.C.M. 1947, 15-2011; amd. Sec. 6, Ch. 279, L. 1981; amd. Sec. 5, Ch. 478, L. 1985; amd. Sec. 1, Ch. 107, L. 1987; amd. Sec. 6, Ch. 272, L. 1987; amd. Sec. 3, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 7, Ch. 533, L. 1997.

**Cross-References**

Uniform Commercial Code — investment securities — registration, Title 30, ch. 8, part 4.
Administration, 30-10-107.
Misleading filings, 30-10-302.
Unlawful representation concerning registration or exemption, 30-10-303.

**30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the order is in the public interest and:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection (1)(c) more than 1 year from the date of the injunction relied on; and

(ii) may not enter an order under this subsection (1)(c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts that would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for registration by notification;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and shall vacate any denial order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a suspension or revocation order against an effective registration statement on the basis of a fact or transaction known to the commissioner when the registration statement became effective.

(3) Upon the entry of an order under subsection (1), the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons for the order and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

**History:** En. Sec. 12, Ch. 251, L. 1961; R.C.M. 1947, 15-2012; amd. Sec. 7, Ch. 272, L. 1987; amd. Sec. 8, Ch. 533, L. 1997.

**Cross-References**

Misleading filings, 30-10-302.

Unlawful representation concerning registration or exemption, 30-10-303.

**30-10-208. Consent to service of process — manner of service.** (1) Every applicant for registration as a broker-dealer, investment adviser, salesperson, or investment adviser representative under parts 1 through 3 of this chapter and every issuer that proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in a form that the commissioner prescribes, an irrevocable consent appointing the commissioner and the commissioner's successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator that arises under parts 1 through 3 of this chapter or any rule or order under parts 1 through 3 of this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by the plaintiff, sends timely notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within any further time that the court allows.

**History:** En. Sec. 15, Ch. 251, L. 1961; amd. Sec. 1, Ch. 105, L. 1963; R.C.M. 1947, 15-2015; amd. Sec. 4, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 902, Ch. 56, L. 2009.

**Cross-References**

Service of process — alternative methods, Title 25, ch. 3, part 5.

Long-arm statutes, 25-3-601, 35-18-107.

**30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of $50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $400 for original registration and $400 for each annual renewal.

(b) (i) For registration of a salesperson or investment adviser representative, the fee is $100 for original registration with each employer, $100 for each annual renewal, and $100 for each transfer.

(ii) A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the fee in subsection (2)(b)(i) to register as an investment adviser representative.

(iii) A salesperson or investment adviser representative who has paid the fee for registration, renewal, or transfer required by this section prior to May 12, 2025, is not required to pay a new or additional fee for a registration, renewal, or transfer that occurred prior to May 12, 2025.

(c) For a federal covered adviser, the fee is $400 for the initial notice filing and $400 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $100.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) (a) Except as provided in subsection (6)(b), all fees, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund.

(b) From March 7, 2013, through June 30, 2027, the fees collected under subsection (1)(b), the notice filing fees provided for in subsection (1)(d), and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2). On or after July 1, 2027, the notice filing fees provided for in subsection (1)(d) and the amounts collected for examination costs under 30-10-210 are subject to deposit as provided in 30-10-115(2).

**History: En. Sec. 16, Ch. 251, L. 1961; amd. Sec. 1, Ch. 242, L. 1977; R.C.M. 1947, 15-2016; amd. Sec. 1, Ch. 281, L. 1981; amd. Sec. 6, Ch. 322, L. 1983; amd. Sec. 1, Ch. 385, L. 1985; amd. Sec. 6, Ch. 478, L. 1985; amd. Sec. 4, Ch. 269, L. 1987; amd. Sec. 8, Ch. 272, L. 1987; amd. Sec. 5, Ch. 351, L. 1989; amd. Sec. 5, Ch. 2, L. 1991; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 2, Ch. 462, L. 1993; amd. Sec. 2, Ch. 261, L. 1995; amd. Sec. 9, Ch. 533, L. 1997; amd. Sec. 65, Ch. 51, L. 1999; amd. Sec. 3, Ch. 156, L. 2003; amd. Sec. 2, Ch. 469, L. 2005; amd. Sec. 4, Ch. 227, L. 2011; amd. Sec. 2, Ch. 66, L. 2013; amd. Sec. 7, Ch. 151, L. 2017; amd. Sec. 1, Ch. 396, L. 2019; amd. Sec. 2, Ch. 404, L. 2021; amd. Sec. 1, Ch. 639, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 639, L. 2025. Amendment effective May 12, 2025.

*Retroactive Applicability:* Section 3, Ch. 639, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to registration fees paid on or after May 9, 2019."

**Cross-References**

Administration, 30-10-107.

**30-10-210. Examination costs.** (1) An issuer, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of the commissioner's authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, which are necessarily incurred on account of the examination, upon presentation of a detailed account of the charges and expenses by the commissioner or pursuant to the commissioner's written authorization; however, reimbursement of expenses may not be required for routine examinations performed in connection with an application for registration. A person may not pay and an examiner may not accept additional emolument on account of an examination.

(2) The commissioner shall deposit examination costs collected under this section in the special revenue account provided for in 30-10-115. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If an issuer, broker-dealer, or investment adviser fails to pay the charges and expenses referred to in subsection (1), the charges and expenses must be paid out of the funds of the commissioner in the same manner as other disbursements of those funds. The amount paid is a first lien upon all of the assets and property in this state of the issuer, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of the issuer, broker-dealer, or investment adviser to pay the charges and expenses also works a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

**History:** **En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963; R.C.M. 1947, 15-2024(2); amd. Sec. 5, Ch. 351, L. 1979; amd. Sec. 7, Ch. 279, L. 1981; amd. Sec. 4, Ch. 249, L. 1989; amd. Sec. 8, Ch. 472, L. 1999.**

**Cross-References**

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.

Investigations and subpoenas, 30-10-304.

**30-10-211. Federal covered securities.** (1) An issuer is required to file the following documents with respect to a federal covered security provided for in section 18(b)(2) of the Securities Act of 1933:

(a) documents that are part of a current federal registration statement filed with the securities and exchange commission or amendments to a current registration statement filed with the securities and exchange commission;

(b) a consent to the service of process signed by the issuer and payment of the fee required in 30-10-209; and

(c) annual or periodic reports of the value of the federal covered securities offered or sold in this state.

(2) The issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 is required to file within 15 days after the first sale in this state a notice on a form prescribed by the commissioner and a consent to service of process and is required to pay the notice filing fee prescribed in 30-10-209.

(3) The commissioner may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed in 30-10-209.

(4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal covered security if the commissioner finds that the order is in the public interest and there is a failure to comply with any requirement of this section.

(5) The commissioner may waive any of the provisions of this section.

**History:** **En. Sec. 12, Ch. 533, L. 1997; amd. Sec. 4, Ch. 156, L. 2003.**

**30-10-212 through 30-10-215 reserved.**

**30-10-216. Repealed.** Sec. 5, Ch. 318, L. 2015.

**History:** **En. Sec. 1, Ch. 286, L. 2013.**

## Part 3
## Offenses, Penalties, and Immunities

**30-10-301. Fraudulent and other prohibited practices.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction:

(A) acting as principal for the person's own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than the client, to knowingly effect the sale or purchase of any security for the account of the client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to the transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser who is registered or required to be registered to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) an assignment of the contract may not be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that the investment adviser has or may have custody.

(7) It is unlawful for a multilevel marketing company or a person who directly or indirectly controls a multilevel marketing company, in the course of transacting business in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make a false statement of a material fact;

(c) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made; or

(d) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

**History:** **En. Sec. 5, Ch. 251, L. 1961; R.C.M. 1947, 15-2005; amd. Sec. 1, Ch. 280, L. 1981; amd. Sec. 9, Ch. 272, L. 1987; amd. Sec. 10, Ch. 533, L. 1997; amd. Sec. 2, Ch. 286, L. 2013; amd. Sec. 2, Ch. 318, L. 2015.**

**Cross-References**

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.

**30-10-302. Misleading filings.** It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under parts 1 through 3 of this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

**History:** **En. Sec. 17, Ch. 251, L. 1961; R.C.M. 1947, 15-2017.**

**Cross-References**

Administration, 30-10-107.
Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.

**30-10-303. Unlawful representation concerning registration or exemption.** (1) The fact that an application for registration under 30-10-201(6), a notice filing under 30-10-211 or 30-10-327, or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed or the fact that a person or security is effectively registered or a complete notice filing has been made does not constitute a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading.

(2) The fact that an application for registration or a notice filing has been filed or a person or security is effectively registered or a complete notice filing has been made as provided in subsection (1) or the fact that an exemption or exception is available for a person, security, or transaction does not mean that the commissioner has passed in any way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

**History:** **En. Sec. 18, Ch. 251, L. 1961; R.C.M. 1947, 15-2018; amd. Sec. 6, Ch. 351, L. 1979; amd. Sec. 11, Ch. 533, L. 1997; amd. Sec. 3, Ch. 286, L. 2013; amd. Sec. 3, Ch. 318, L. 2015.**

**30-10-304. Investigations and subpoenas.** (1) The commissioner may:

(a) make public or private investigations or examinations within or outside this state as the commissioner considers necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order under this chapter or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms under this chapter;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order under this chapter.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner or the officer designated by the commissioner to produce documentary evidence if ordered or to give evidence concerning the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) A person is not excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, testimony or evidence that is compelled following a claim of privilege against self-incrimination or any

information directly or indirectly derived from the testimony or evidence may not be used against the witness in any criminal case. This section does not prohibit the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in the commissioner's sole discretion, that the ends of justice would be served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103.

**History: En. Sec. 19, Ch. 251, L. 1961; R.C.M. 1947, 15-2019; amd. Sec. 1, Ch. 577, L. 1983; amd. Sec. 10, Ch. 272, L. 1987; amd. Sec. 1, Ch. 107, L. 1989; amd. Sec. 1, Ch. 540, L. 1993.**

**Cross-References**

Subpoenas and witnesses, Title 26, ch. 2.
Examination costs, 30-10-210.
Criminal liabilities, 30-10-306.
Perjury, 45-7-201.

**30-10-305.** *(Temporary)* **Injunctions and other remedies — limitations on actions.** (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable attorney fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter.

(b) If the commissioner finds that a person has willfully engaged in an act or practice identified in subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not to exceed $20,000 per violation.

(c) A fine under this subsection (3) is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund.

(d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability based on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability based on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

(5) The commissioner in an administrative order requiring the payment of restitution or a court in a judicial order or judgment requiring payment of restitution may include a provision requiring a person determined to have violated any provision of parts 1 through 3 of this chapter to contribute an amount to the securities restitution assistance fund created by 30-10-1004. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**30-10-305.** *(Effective July 1, 2027)* **Injunctions and other remedies — limitations on actions.** (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the hearing examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter.

(b) If the commissioner finds that a person has willfully engaged in any act or practice identified in subsection (3)(a) and the act or practice affected a vulnerable person, the commissioner may impose a fine not to exceed $20,000 per violation.

(c) A fine under this subsection (3) is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund.

(d) Imposition of any fine under this subsection (3) is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection (3), the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

**History: En. Sec. 20, Ch. 251, L. 1961; R.C.M. 1947, 15-2020; amd. Sec. 7, Ch. 351, L. 1979; amd. Sec. 2, Ch. 407, L. 1985; amd. Sec. 7, Ch. 478, L. 1985; amd. Sec. 1, Ch. 231, L. 1987; amd. Sec. 5, Ch. 249, L. 1989; amd. Sec. 2, Ch. 540, L. 1993; amd. Sec. 11, Ch. 58, L. 2011; amd. Sec. 2, Ch. 28, L. 2015.**

**Cross-References**

Injunctions, Title 27, Ch. 19.
Administration, 30-10-107.

**30-10-306. Criminal liabilities.** (1) A person who willfully violates any provision of parts 1 through 3 of this chapter except 30-10-302, who willfully violates any rule or order under parts 1 through 3 of this chapter, or who willfully violates 30-10-302 knowing the statement made to be false or misleading in any material respect shall upon conviction be fined not more than $5,000 or imprisoned not more than 10 years, or both. However, if the person convicted has been previously convicted of a felony in any way involving securities, imprisonment for not less than 1 year is mandatory.

(2) A person who willfully violates 30-10-301 with knowledge that the violation would affect a vulnerable person shall upon conviction be fined not more than $20,000 or imprisoned not more than 20 years, or both.

(3) An indictment or information may not be returned under parts 1 through 3 of this chapter more than 8 years after the alleged violation. However, the time limitation period may be extended allowing commencement of a prosecution within 1 year after the date the commissioner or other prosecuting officer becomes aware of the violation.

(4) The commissioner may refer evidence that may be available concerning violations of parts 1 through 3 of this chapter or of any rule or order under parts 1 through 3 of this chapter to the attorney general or the proper prosecuting attorney, who may in the prosecutor's discretion, with or without a reference, institute the appropriate criminal proceedings under parts 1 through 3 of this chapter.

(5) Parts 1 through 3 of this chapter do not limit the power of the state to punish any person for any conduct that constitutes a crime.

**History: En. Sec. 21, Ch. 251, L. 1961; R.C.M. 1947, 15-2021; amd. Sec. 1, Ch. 394, L. 1981; amd. Sec. 903, Ch. 56, L. 2009; amd. Sec. 3, Ch. 28, L. 2015.**

**Cross-References**

Registration of broker-dealers, salespeople, and investment advisers, 30-10-201.
Denial, suspension, and revocation of registration of securities, 30-10-207.

**30-10-307. Civil liabilities — limitations on actions.** (1) Any person who offers or sells a security in violation of 30-10-202 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from the offeror or seller, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 10% a year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the buyer no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 10% a year from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of the seller, and every broker-dealer or salesperson who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There must be contribution among the several liable persons.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. A person may not sue under this section if:

(a) the buyer has received a written offer, at a time when the buyer owned the security, to refund the consideration paid, together with interest at 10% a year from the date of payment, less the amount of any income received on the security and the buyer failed to accept the offer within 30 days of its receipt; or

(b) the buyer has received a written offer at a time when the buyer did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 10% a year from the date of disposition.

(4) A person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order under parts 1 through 3 of this chapter or who has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation may not base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order adopted under parts 1 through 3 of this chapter is void as against public policy and in the public interest.

(5) (a) An action may not be maintained under this section to enforce any liability founded on a violation of 30-10-202 unless it is brought within 1 year after discovery of the violation or after the discovery should have been made by exercise of reasonable diligence.

(b) An action may not be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 2 years after discovery of the fraud or misrepresentation on which the liability is founded or after the discovery should have been made by the exercise of reasonable diligence.

(c) An action may not be maintained under this section to enforce any liability founded on fraud or misrepresentation unless it is brought within 5 years after the transaction on which the action is based.

**History:** **En. Sec. 22, Ch. 251, L. 1961; amd. Sec. 1, Ch. 213, L. 1967; R.C.M. 1947, 15-2022; amd. Sec. 2, Ch. 280, L. 1981; amd. Sec. 2, Ch. 231, L. 1987; amd. Sec. 11, Ch. 272, L. 1987; amd. Sec. 4, Ch. 162, L. 1993; amd. Sec. 904, Ch. 56, L. 2009; amd. Sec. 6, Ch. 8, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 8, L. 2025. Amendment effective October 1, 2025.

**Cross-References**

Registration by notification, 30-10-203.
Registration by coordination, 30-10-204.

**30-10-308. Judicial review of orders.** Any person aggrieved by a final order of the commissioner is entitled to judicial review as provided in Title 2, chapter 4, part 7.

**History:** **En. Sec. 23, Ch. 251, L. 1961; R.C.M. 1947, 15-2023; amd. Sec. 5, Ch. 227, L. 2011.**

**Cross-References**

Administration, 30-10-107.

**30-10-309. Securities restitution.** (1) The commissioner may, after conducting a hearing pursuant to 30-10-305, require a person found to have committed a violation of 30-10-301 to make restitution for all financial losses sustained by any person as a result of the violation. The commissioner may further require a person found to have violated 30-10-301 to pay 10% annual interest on the amount of restitution from the date of the violation, reasonable attorney fees, and costs associated with bringing the administrative action.

(2) An amount required to be paid under this section is in addition to all other penalties imposed by law. If a person fails to pay an amount referred to in this section, the amount required to be paid is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and remitted to the person ordered to receive restitution.

(3) The commissioner or a person awarded restitution may bring suit in a court of competent jurisdiction to recover the sums awarded, attorney fees, and costs incurred in obtaining a judgment.

(4) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

**History: En. Sec. 4, Ch. 390, L. 1997.**

**30-10-310. Reporting requirements.** (1) A broker-dealer, investment adviser, investment adviser representative, or other person who has reason to believe fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the occurrence.

(2) A broker-dealer shall make complete disclosure of all employment-related information required to be reported to the national association of securities dealers pursuant to rules and related explanatory materials of that association.

(3) A broker-dealer, investment adviser, investment adviser representative, or other person is not liable for any civil claim, including counterclaims, third-party claims, or cross-claims, related to reporting or providing information or otherwise cooperating with an investigation of fraud under this chapter unless the complainant shows by clear and convincing evidence that:

(a) the party knew at the time that the statement was made that the statement was false in any material respect; or

(b) the party acted in reckless disregard as to the statement's truth or falsity.

**History: En. Sec. 5, Ch. 390, L. 1997; amd. Sec. 1, Ch. 267, L. 1999.**

**30-10-311 through 30-10-314 reserved.**

**30-10-315. Requirements for securities fraud actions — definition.** (1) In any private action arising under this part, if the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, the complaint must specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading. If an allegation regarding the statement or omission is made on information and belief, the complaint must state with particularity all facts on which that belief is based.

(2) In any private action arising under this part in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint must, with respect to each act or omission alleged to violate this part, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(3) In any private action arising under this part, the court shall on the motion of any defendant, dismiss the complaint if the requirements of subsections (1) and (2) are not met.

(4) (a) In any private action arising under this part, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery pursuant to this subsection (4), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the party and that are relevant to the allegations as if they were the subject of a continuing request for production of documents from an opposing party under the Montana Rules of Civil Procedure.

(5) A party aggrieved by the willful failure of an opposing party to comply with subsection (4) may apply to the court for an order awarding appropriate sanctions.

(6) In any private action arising under this part, the plaintiff has the burden of proving that the act or omission of the defendant alleged to violate this title caused the loss for which the plaintiff seeks to recover damages.

(7) As used in 30-10-316 through 30-10-323 and this section, "private action arising under this part" means an action against a person referred to in 30-10-319(2).

**History: En. Sec. 1, Ch. 468, L. 1997.**

**30-10-316. Sanctions.** (1) In any private action arising under this part, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) If the court makes a finding under subsection (1) that a party or attorney violated any requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on the party or attorney in accordance with Rule 11. Prior to making a finding that any party or attorney has violated Rule 11, the court shall give the party or attorney notice and an opportunity to respond.

(3) (a) Subject to subsections (3)(b) and (3)(c), for the purposes of subsection (2), the court shall adopt a presumption that the appropriate sanction:

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred in the action.

(b) The presumption described in subsection (3)(a) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that:

(i) the award of attorney fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust and the failure to make an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11 was de minimis.

(c) If the party or attorney against whom sanctions are to be imposed meets its burden under subsection (3)(b), the court shall award the sanctions that the court considers appropriate pursuant to Rule 11.

**History:** **En. Sec. 2, Ch. 468, L. 1997.**

**30-10-317. Defendant's right to written interrogatories.** In any private action arising under this part in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each defendant's state of mind at the time the alleged violation occurred.

**History:** **En. Sec. 3, Ch. 468, L. 1997.**

**30-10-318. Limitation on damages.** (1) The provisions of this section limit any damages otherwise available under this part.

(2) Except as provided in subsection (3), in any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded in a national securities market, the award of damages to the plaintiff may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(3) In any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded on a national securities market, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in subsection (2), the plaintiff's damages may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(4) For purposes of this section, the mean trading price of a security must be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in subsection (2).

**History:** **En. Sec. 4, Ch. 468, L. 1997.**

**30-10-319. Applicability of safe harbor for forward-looking statements.** (1) For the purposes of this section, the following definitions apply:

(a) "Forward-looking statement" means:

(i) a statement containing a projection of revenue; income per share, including income loss; earnings per share, including earnings loss; capital expenditures; dividends; capital structure; or other financial items;

(ii) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(iii) a statement of future economic performance, including any statement contained in a discussion and analysis of financial condition by the management or in the results of operations;

(iv) any statement of the assumptions underlying or relating to any statement described in subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii);

(v) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(vi) a statement containing a projection or estimate of other items as may be specified by rule or regulation of the commissioner.

(b) "Going private transaction" has the meaning given that term under the rules or regulations of the United States securities and exchange commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(e).

(c) "Investment company" has the same meaning as in section 3(a) of the federal Investment Company Act of 1940, 15 U.S.C. 80a-3(a).

(d) (i) "Issuer" has the meaning provided in 30-10-103.

(ii) The term does not include a broker-dealer as defined in 30-10-103.

(e) "Penny stock" has the same meaning as in section 3(a)(51) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(51), and the rules and regulations or orders issued pursuant to that section.

(f) "Person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

(g) The terms "blank check company", "direct participation investment program", "executive officer of an entity", "limited liability company", "partnership", and "rollup transaction" have the meanings given those terms by rule or regulation of the commissioner.

(2) This section applies only to a forward-looking statement made by:

(a) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section (13)(a) or (15)(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d);

(b) a person acting on behalf of an issuer subject to the provisions of subsection (2)(a);

(c) an outside reviewer retained by an issuer subject to the provisions of subsection (2)(a) making a statement on behalf of that issuer; or

(d) an underwriter, with respect to information provided by an issuer subject to the provisions of subsection (2)(a) or information derived from information provided by that issuer.

(3) Except to the extent otherwise specifically provided by rule, regulation, or order of the securities and exchange commission, this section does not apply to a forward-looking statement:

(a) that is made with respect to the business or operations of the issuer, if the issuer:

(i) during the 3-year period preceding the date on which the statement was first made:

(A) was convicted of any felony or misdemeanor described in section 15(b)(4)(B)(i) through (iv) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(B), or was convicted under 30-10-306;

(B) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(I) prohibits future violations of the antifraud provisions of state or federal securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of state or federal securities laws; or

(III) determines that the issuer violated the antifraud provisions of state or federal securities laws;

(ii) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(iii) issues penny stock;

(iv) makes the forward-looking statement in connection with a rollup transaction; or

(v) makes the forward-looking statement in connection with a going private transaction; or

(b) that is:

(i) included in a financial statement prepared in accordance with generally accepted accounting principles;

(ii) contained in a registration statement of, or otherwise issued by, an investment company;

(iii) made in connection with a tender offer;

(iv) made in connection with an initial public offering;

(v) made in connection with an offering by, or relating to the operations of, a partnership, a limited liability company, or a direct participation investment program; or

(vi) made in a disclosure of beneficial ownership in a report required to be filed with the United States securities and exchange commission pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

(4) (a) Except as provided in subsection (3), in any private action arising under this part that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (2) is not liable with respect to any forward-looking statement, whether written or oral, if and to the extent that:

(i) the forward-looking statement is identified as a forward-looking statement and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement or is immaterial; or

(ii) the plaintiff fails to prove that the forward-looking statement:

(A) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(B) if made by a business entity, was made by or with the approval of an executive officer of that entity and made or approved by that officer with actual knowledge by that officer that the statement was false or misleading.

(b) In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) or by a person acting on behalf of the issuer, the requirement in subsection (4)(a) must be considered satisfied under the following circumstances:

(i) if the oral forward-looking statement is accompanied by a cautionary statement that the particular oral statement is a forward-looking statement and that the actual results could differ materially from those projected in the forward-looking statement; and

(ii) if the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document or portion of the written document;

(iii) if the accompanying oral statement referred to in subsection (4)(b)(ii) identifies the document or portion of the document that contains the additional information about those factors relating to the forward-looking statement; and

(iv) if the information contained in that written document is a cautionary statement that satisfies the standard established in subsection (4)(a).

(c) Any document filed with the commissioner or with the securities and exchange commission or generally disseminated must be considered to be readily available for purposes of this section.

(5) This section does not impose upon any person a duty to update a forward-looking statement.

(6) On any motion to dismiss based on subsection (4)(a), the court shall consider:

(a) any statement cited in the complaint; and

(b) any cautionary statement accompanying the forward-looking statement that is not subject to material dispute and that is cited by the defendant.

(7) In any private action arising under this part, the court shall stay discovery, other than discovery that is specifically directed to the applicability of the exemption provided for in this section, during the pendency of any motion by a defendant for summary judgment that is based on the grounds that:

(a) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(b) the exemption provided for in this section precludes a claim for relief.

**History: En. Sec. 5, Ch. 468, L. 1997.**

**30-10-320. Prohibition of referral fees.** A broker, dealer, or person associated with a broker or dealer, may not solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action under this part or under the Securities Act of 1933, 15 U.S.C. 77a, et seq.

**History: En. Sec. 6, Ch. 468, L. 1997.**

**30-10-321. Prosecution of persons aiding violations.** For purposes of any action brought by the commissioner under 30-10-304, 30-10-305, or 30-10-306, for violations of 30-10-301 through 30-10-303, any person that knowingly provides substantial assistance to another person in violation of a provision of this part or of any rule or regulation issued under this part must be considered to be in violation of that provision to the same extent as the person to whom the assistance is provided.

**History: En. Sec. 7, Ch. 468, L. 1997.**

**30-10-322. Loss causation.** In any private action arising under this part, if any portion or all of the amount recoverable represents other than the depreciation in value of the subject security resulting from a part of the prospectus or oral communication not being true or omitting to state a material fact required to be stated in the prospectus or oral communication or necessary to make the statement not misleading, then that portion or amount is not recoverable with respect to the liability of that person.

**History: En. Sec. 8, Ch. 468, L. 1997.**

**30-10-323. Construction.** Sections 30-10-315 through 30-10-322 may not be considered to create or ratify any implied private right of action or to prevent the commissioner, by rule or regulation, from restricting or otherwise regulating private actions under Montana securities laws.

**History: En. Sec. 9, Ch. 468, L. 1997.**

**30-10-324. Definitions.** As used in 30-10-301, 30-10-324, 30-10-325, and 30-10-327, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value or purported value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based on the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based on the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) "Direct selling association" means the nonprofit entity incorporated in the state of Delaware and recognized by the department as the direct selling association.

(4) "Multilevel marketing company" means a person that:

(a) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors:

(i) at different levels of distribution; or

(ii) pursuant to a formula for compensating participants in whole or in part based on purchases of sales by or recruitment of other participants;

(b) permits participants to recruit other participants in the company; and

(c) provides for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(5) "Participant" means a person involved in a sales plan or operation.

(6) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(7) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from anything of value, including anything of purported value, obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

(c) A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection (7)(c)(iv), provides compensation to a participant based primarily on the sale of goods or services by the participant, including goods or services used or consumed by the participant or other participants, and not primarily for obtaining the participation of other persons in the sales plan or operation;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation; and

(C) provides that if the person cancels participation within the time provided and returns any items given to the person to assist in marketing goods or services under the plan, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(iv) (A) on the request of a participant deciding to terminate participation in the sales plan or operation, provides for the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (7)(c)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

(8) "Transacting business" means to directly or indirectly:

(a) offer, sell, distribute, or supply goods or services through independent agents, contractors, or distributors at different levels of distribution; or

(b) recruit or attempt to recruit participants in a multilevel marketing company.

**History: En. Sec. 1, Ch. 74, L. 1999; amd. Sec. 1, Ch. 322, L. 2001; amd. Sec. 1, Ch. 446, L. 2003; amd. Sec. 51, Ch. 2, L. 2009; amd. Sec. 4, Ch. 286, L. 2013; amd. Sec. 4, Ch. 318, L. 2015; amd. Sec. 2, Ch. 104, L. 2019.**

**30-10-325. Operating pyramid promotional scheme unlawful.** (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who willfully violates the provisions of subsection (1) shall, for each participant giving consideration, be fined an amount not more than $100,000 or be imprisoned for not more than 10 years, or both.

(3) A person who violates the provisions of subsection (1) shall, for each participant giving consideration, be assessed a civil penalty in an administrative proceeding in an amount not to exceed $10,000.

**History: En. Sec. 2, Ch. 74, L. 1999; amd. Sec. 2, Ch. 446, L. 2003.**

**30-10-326. Repealed.** Sec. 6, Ch. 286, L. 2013.

**History: En. Sec. 3, Ch. 74, L. 1999; amd. Sec. 2, Ch. 322, L. 2001.**

**30-10-327. Multilevel marketing company — notice of activity — consent to service.** (1) A multilevel marketing company shall file with the commissioner on forms prescribed by the commissioner:

(a) prior to obtaining a participant that is a resident of this state:

(i) a notice that the company intends to operate in this state; and

(ii) an irrevocable consent designating the commissioner as its agent for service of process for any alleged violation of 30-10-325; and

(b) following the initial filing under subsection (1)(a), an annual notice of the company's operations in this state.

(2) The forms in subsection (1) must include, at a minimum:

(a) the names, home or business addresses, dates of birth, and titles of the multilevel marketing company's officers, directors, and trustees;

(b) the multilevel marketing company's corporate name, state of domicile and state of incorporation, and headquarters mailing address, e-mail address, and telephone and telefax numbers; and

(c) a detailed description of the levels of distribution in the multilevel marketing company, the manner of compensating participants, and the compensation structure of the marketing plan.

(3) Compliance with this section does not confer on a multilevel marketing company any license or registration or signify that the state has sanctioned, approved, registered, or endorsed a multilevel marketing company or its sales plan or operation.

(4) A multilevel marketing company or any individual or entity affiliated with a multilevel marketing company may not represent that the multilevel marketing company, individual, or entity is licensed, sanctioned, approved, registered, or endorsed in this state by virtue of compliance with 30-10-325 and this section.

(5) The requirements of subsections (1) and (2) do not apply to a direct selling association member.

**History:** **En. Sec. 1, Ch. 318, L. 2015.**

**30-10-328 through 30-10-339 reserved.**

**30-10-340. Governmental disclosure — immunity.** (1) If a qualified individual, investment adviser, investment adviser representative, or salesperson reasonably believes that financial exploitation of a vulnerable person may have occurred, may have been attempted, or is being attempted, the qualified individual, investment adviser, investment adviser representative, or salesperson may promptly report the suspected exploitation to the commissioner in the manner outlined in the broker-dealer's or investment adviser's policies and procedures for reporting suspected exploitation. If the policies and procedures do not have a manner outlined, the qualified individual, investment adviser, investment adviser representative, or salesperson may report the suspected exploitation directly to the commissioner.

(2) A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, makes a disclosure of information under this section is immune from administrative or civil liability that might otherwise arise from the disclosure or from any failure to notify the vulnerable person or the person's agent of the disclosure.

**History:** **En. Sec. 1, Ch. 84, L. 2017.**

**30-10-341. Third-party disclosure — immunity.** (1) A qualified individual, investment adviser, investment adviser representative, or salesperson who reasonably believes that the financial exploitation of a vulnerable person is occurring, has or may have occurred, is being attempted, or has been or may have been attempted:

(a) may notify:

(i) a federal, state, or local law enforcement agency;

(ii) the department of public health and human services provided for in 2-15-2201 or its local affiliate; or

(iii) the commissioner;

(b) may notify any third party reasonably associated with a vulnerable person. A third party reasonably associated with a vulnerable person includes but is not limited to the following:

(i) a parent, spouse, adult child, sibling, or other known family member or close associate of a vulnerable person;

(ii) an authorized contact provided by a vulnerable person to the qualified individual, investment adviser, investment adviser representative, or salesperson;

(iii) a co-owner, additional authorized signatory, or beneficiary of a vulnerable person's account; and

(iv) an attorney-in-fact, trustee, conservator, guardian, or other fiduciary who has been selected by a vulnerable person, a court, a government agency, or a third party to manage some or all of the financial affairs of the vulnerable person;

(c) may not notify any third party reasonably associated with a vulnerable person of suspected financial exploitation if the qualified individual, investment adviser, investment adviser representative or salesperson believes the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable person.

(2) A qualified individual, investment adviser, investment adviser representative, or salesperson who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the disclosure.

**History: En. Sec. 2, Ch. 84, L. 2017; amd. Sec. 2, Ch. 157, L. 2023.**

**30-10-342. Delaying disbursements — immunity.** (1) A broker-dealer or investment adviser may delay a disbursement from an account of a vulnerable person or an account on which a vulnerable person is a beneficiary if:

(a) the broker-dealer, the investment adviser, or a qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of the vulnerable person; and

(b) the broker-dealer or investment adviser:

(i) not more than 2 business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless the party is reasonably believed to have engaged in suspected or attempted financial exploitation of the vulnerable person;

(ii) not more than 2 business days after the requested disbursement, notifies the commissioner; and

(iii) continues the internal review of the suspected or attempted financial exploitation of the vulnerable person, as necessary, and reports the investigation's results to the commissioner within 7 business days after the requested disbursement.

(2) A delay of a disbursement authorized under this section expires upon the sooner of:

(a) a determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the vulnerable person; or

(b) 15 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement, unless the commissioner requests that the broker-dealer or investment adviser extend the delay. If extended, the delay expires no more than 25 business days after the date on which the broker-dealer or investment adviser first delayed the disbursement, unless the delay is terminated sooner by the commissioner or by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement beyond the timeframe provided in subsection (2) or may order other protective relief based on a petition of the commissioner, the broker-dealer or investment adviser who initiated the delay under this section, or an interested party.

(4) A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with this section is immune from administrative or civil liability that might otherwise arise from the delay in a disbursement in accordance with this section.

**History: En. Sec. 3, Ch. 84, L. 2017.**

## Part 4
## Fiduciary Security Transfers (Repealed)

**30-10-401. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 11, Ch. 101, L. 1963; R.C.M. 1947, 15-662.**

**30-10-402. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 1, Ch. 101, L. 1963; R.C.M. 1947, 15-652.**

**30-10-403. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 2, Ch. 101, L. 1963; R.C.M. 1947, 15-653.**

**30-10-404. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 3, Ch. 101, L. 1963; R.C.M. 1947, 15-654.**

**30-10-405. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 4, Ch. 101, L. 1963; R.C.M. 1947, 15-655.**

**30-10-406. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 5, Ch. 101, L. 1963; R.C.M. 1947, 15-656.**

**30-10-407. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 6, Ch. 101, L. 1963; R.C.M. 1947, 15-657.**

**30-10-408. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 7, Ch. 101, L. 1963; R.C.M. 1947, 15-658.**

**30-10-409. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 8, Ch. 101, L. 1963; R.C.M. 1947, 15-659.**

**30-10-410. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 9, Ch. 101, L. 1963; R.C.M. 1947, 15-660.**

**30-10-411. Repealed.** Sec. 88, Ch. 536, L. 1997.
**History: En. Sec. 10, Ch. 101, L. 1963; R.C.M. 1947, 15-661.**

## Parts 5 through 8 reserved

## Part 9
## Montana Living Trust Act

**30-10-901. Short title.** This part may be cited as the "Montana Living Trust Act".
**History: En. Sec. 1, Ch. 348, L. 1997.**

**30-10-902. Purpose.** The purpose of this part is to regulate the marketing and sale of living trusts in Montana and to provide civil remedies for fraudulent and deceptive sales practices.
**History: En. Sec. 2, Ch. 348, L. 1997.**

**30-10-903. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) (a) "Living trust" means either an irrevocable or a revocable inter vivos trust.

(b) The term does not include an account with a POD designation, as defined in 72-6-201.

(2) "Offer" or "offer to sell" includes an attempt or offer to dispose of a living trust for value or a solicitation of an offer to buy a living trust for value.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, or unincorporated organization.

(4) "Sale" includes each contract of sale, contract to sell, or disposition of a living trust for value.
**History: En. Sec. 3, Ch. 348, L. 1997.**

**30-10-904. Licensure — exemption.** (1) A person may not offer or sell a living trust in this state unless the person:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) has applied for and been granted a license under this section.

(2) Subsection (1) does not apply to the preparation, acceptance, or discussion of a living trust for an individual client, when the preparation of the living trust is based upon the client's particular financial circumstance, by:

(a) an attorney licensed to practice law in this state;

(b) an employee of a state or national bank with trust powers or a trust corporation; or

(c) a person on behalf of an educational, charitable, or religious institution, when done in conjunction with an attorney licensed to practice law in this state.

(3) In any proceeding under this part, the burden of proving that a person preparing a living trust is excluded from the license requirement is on the person claiming the exclusion.

(4) A person may apply for a license to offer and sell living trusts by filing an application in the form that the state auditor prescribes and paying the fee required in subsection (5).

(5) The state auditor shall issue a license to offer or sell a living trust to a person who:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201;

(b) correctly files an application for the license with the state auditor; and

(c) pays an application fee in the same amount as the amount paid by the person for original registration as an investment adviser or investment adviser representative.

(6) The state auditor may issue an order denying, suspending, or revoking the effectiveness of any pending application or approved license if any provision of this part or any rule, order, or condition imposed by this part has been willfully violated in connection with the offer or sale of a living trust by a person involved in the assembling, drafting, executing, offering, or selling of the living trust.

(7) The license is effective until December 31 following issuance of the license or until another date that the state auditor establishes by rule unless the license is suspended or revoked.

(8) A person may renew a license annually, prior to the termination date of the license, if the person:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) pays a renewal fee in the same amount as the amount paid by the person for annual renewal as an investment adviser or investment adviser representative.

**History: En. Sec. 4, Ch. 348, L. 1997.**

**30-10-905. Administration.** (1) The administration of the provisions of this part is under the general supervision and control of the state auditor. The state auditor shall adopt forms and rules necessary to implement this part.

(2) A document is filed when it is received by the state auditor. The state auditor shall keep a register of all applications for licenses to offer and sell living trusts in this state. The register must be open for public inspection. The information contained in or filed with an application must be made available to the public.

(3) Upon request and at a reasonable charge, the state auditor shall furnish to any person photostatic or other copies, certified under the seal of office if requested, of any entry in the register or any document filed with the state auditor that is a matter of public record. In any proceeding or prosecution under this part, a certified copy is prima facie evidence of the contents of the entry or document certified.

(4) A person who has received a license to offer and sell living trusts in this state shall make and keep accounts and other records as required by the state auditor. The records are subject at any time to reasonable periodic, special, or other examination, within or outside this state, by representatives of the state auditor if necessary to protect the public interest or for the protection of consumers.

**History: En. Sec. 5, Ch. 348, L. 1997.**

**30-10-906. Scope.** This part applies to any person who sells or offers to sell a living trust in this state or when an offer to buy a living trust is made and accepted in this state. An offer to sell or buy is made in this state, whether or not either party is then present in this state, if the offer either originates in this state or is directed by the offeror to this state and is received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

**History: En. Sec. 6, Ch. 348, L. 1997.**

**30-10-907. Fines and fees — deposit to general fund.** All fines and fees received by the state auditor pursuant to this part must be deposited in the general fund. If, in any year, the fines and fees do not cover the cost of administering this part, the state auditor may increase the fees by rule to the extent necessary to cover the expected costs of administering this part for the following year.

**History: En. Sec. 7, Ch. 348, L. 1997.**

**30-10-908. Consent to service of process — manner of service.** (1) An applicant under this part shall file with the state auditor, in the form the state auditor prescribes, an irrevocable consent appointing the state auditor as the applicant's agent for the purpose of receiving service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator that arises under this part or any rule or order adopted or issued pursuant to this part. Service on the state auditor has the same force and validity as if served personally on the applicant or the applicant's successor, executor, or administrator.

(2) Service may be made by leaving a copy of the process in the office of the state auditor, but service is not effective unless:

(a) the plaintiff sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the state auditor; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or at a later date as the court allows.

**History: En. Sec. 8, Ch. 348, L. 1997.**

**30-10-909. Fraudulent and other prohibited practices.** It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

(1) employ any device, scheme, or artifice to defraud;

(2) make any untrue statement of a material fact;

(3) fail to state a material fact necessary to render any statement made not misleading; or

(4) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

**History: En. Sec. 9, Ch. 348, L. 1997; amd. Sec. 1, Ch. 513, L. 2005.**

**30-10-910. Misleading filings.** It is unlawful for a person to knowingly make or cause to be made a materially false or misleading statement in any document filed with the state auditor or in any proceeding under this part.

**History: En. Sec. 10, Ch. 348, L. 1997.**

**30-10-911. Unlawful representation concerning approval of application.** The fact that an application for a license to offer or sell living trusts has been filed or approved in this state does not constitute a finding by the state auditor that any document filed under this part is true, complete, and not misleading. The state auditor's approval of an application for a license to offer or sell a living trust may not be construed as a determination of the merits of any transaction or a recommendation of any person or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

**History: En. Sec. 11, Ch. 348, L. 1997.**

**30-10-912. Investigations and subpoenas.** (1) The state auditor may:

(a) issue subpoenas, compel testimony, and conduct hearings as provided in Title 2, chapter 4, parts 1 and 6;

(b) make public or private investigations or examinations within or outside this state that the state auditor considers necessary to:

(i) determine whether a license to sell or offer to sell living trusts should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of this part or any rule or order adopted or issued pursuant to this part; or

(iii) aid in the enforcement of this part or in the prescribing of rules and forms under this part;

(c) require or permit a person to file a statement in writing, under oath or otherwise as the state auditor may determine, relating to the facts and circumstances concerning a matter to be investigated; and

(d) publish information concerning a violation of this part or any rule or order adopted or issued pursuant to this part.

(2) A person is not excused from attending a hearing or from producing a document or record before the state auditor or in obedience to a subpoena of the state auditor or any officer designated by the state auditor or pursuant to any proceeding instituted by the state auditor on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. This section does not prohibit the state auditor from granting immunity from prosecution for any transaction, matter, or thing concerning which a witness is compelled to testify if the state auditor determines, in the state auditor's discretion, that justice would be served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

**History:** **En. Sec. 12, Ch. 348, L. 1997.**

**30-10-913. Injunctions and other remedies — limitations on actions — criminal sanctions.** (1) If it appears to the state auditor that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this part, the state auditor may:

(a) issue an order directing the person to cease and desist from committing or continuing the act or practice until a hearing can be held pursuant to Title 2, chapter 4, part 6; or

(b) without issuing an order to cease and desist, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with this part or any rule or order adopted or issued pursuant to this part. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The state auditor may not be required to post a bond.

(2) A final judgment or decree under subsection (1)(b) determining that a person has violated this part in an action brought by the state auditor for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in any action maintained pursuant to 30-10-915.

(3) The state auditor may, after giving reasonable notice and an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, impose a fine not to exceed $10,000 for each violation upon a person found to have engaged in an act or practice constituting a violation of any provision of this part or any rule or order adopted or issued pursuant to this part. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the state auditor in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to Title 2, chapter 4, part 6. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the state auditor and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under this part.

(4) An administrative or civil action may not be maintained by the state auditor under this section to enforce a liability founded on a violation of this part or any rule or order adopted or issued pursuant to this part unless it is brought within 2 years after discovery by the state auditor of the facts constituting the violation.

(5) Any person who purposely or knowingly violates any provision of this part or who purposely or knowingly violates any rule or order adopted or issued pursuant to this part shall upon conviction be fined not more than $10,000 or imprisoned for a term of not more than 10 years, or both. An indictment or information may not be returned under this part more than 8 years after the alleged violation. However, the time limitation period may be extended to allow commencement of a prosecution within 1 year after the date the state auditor or other prosecuting officer becomes aware of the violation on which the action is based.

(6) The state auditor may refer evidence concerning violations of this part or of any rule or order adopted or issued pursuant to this part to the attorney general or proper county attorney,

who may, with or without the referral, institute the appropriate criminal proceedings under this part.

(7) Nothing in this part limits the power of the state to punish a person for any conduct that constitutes a crime.

**History: En. Sec. 13, Ch. 348, L. 1997.**

**30-10-914. Judicial review of orders.** A person aggrieved by a final order of the state auditor may obtain judicial review of the order as provided in Title 2, chapter 4, part 7.

**History: En. Sec. 14, Ch. 348, L. 1997.**

**30-10-915. Civil liabilities — limitations on actions.** (1) A person who offers or sells a living trust in violation of 30-10-904 or offers or sells a living trust by means of fraud or misrepresentation is liable to the person buying the living trust, who may sue either at law or in equity to recover the consideration paid for the living trust, together with interest, at 10% a year from the date of payment, costs, and reasonable attorney fees.

(2) A person who directly or indirectly controls an offeror or seller who is liable under subsection (1) or a partner, officer, director, associate, or employee of the offeror or seller who participates or materially aids in the offer or sale is liable jointly and severally with the offeror or seller if the nonseller knew or in the exercise of reasonable care should have known of the violation. Contribution may be required among liable persons.

(3) A person who has made or engaged in the performance of a contract in violation of any provision of this part or any rule or order adopted or issued pursuant to this part or who has acquired any purported right under the contract with knowledge of the violation may not base any suit on the contract. Any condition, stipulation, or provision binding a person acquiring a living trust to waive compliance with any provision of this part or any rule or order adopted pursuant to this part is void as against public policy and the public interest.

(4) (a) Except as provided in subsection (4)(b), an action may not be maintained under this section to enforce any liability founded on a violation of 30-10-904, fraud, or misrepresentation unless it is brought within 2 years after discovery of the violation or after the time the discovery should have been made by the exercise of reasonable diligence.

(b) An action may not be maintained under this section to enforce any liability unless it is brought within 5 years after the transaction on which the action is based.

**History: En. Sec. 15, Ch. 348, L. 1997.**

## Part 10
## Securities Restitution Assistance Fund

**30-10-1001.** *(Temporary)* **Short title.** This part may be cited as the "Securities Restitution Assistance Fund Act of Montana". *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History: En. Sec. 1, Ch. 58, L. 2011.**

**30-10-1002.** *(Temporary)* **Purpose.** The purpose of this part is to provide restitution assistance to victims who:

(1) were awarded restitution in a final order issued by the commissioner or were awarded restitution in the final order in a legal action initiated by the commissioner; and

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History: En. Sec. 2, Ch. 58, L. 2011.**

**30-10-1003.** *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means a person who files an application for restitution assistance under this part on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Department" means the office of the securities commissioner established in 2-15-1901.

(3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated by the commissioner.

(4) "Fund" means the securities restitution assistance fund created by 30-10-1004.

(5) "Securities violation" means a violation of this chapter and any related administrative rules.

(6) "Victim" means a person who was awarded restitution in a final order.

(7) "Vulnerable person" means:

(a) a person who is at least 60 years of age;

(b) a person who suffers from mental impairment because of frailties or dependencies typically related to advanced age, such as dementia or memory loss;

(c) a person who has a developmental disability as defined in 53-20-102; or

(d) a person with a mental disorder. For the purposes of this subsection (7)(d), "mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History: En. Sec. 3, Ch. 58, L. 2011; amd. Sec. 4, Ch. 28, L. 2015; amd. Sec. 6, Ch. 84, L. 2017.**

**30-10-1004.** *(Temporary)* **Creation of securities restitution assistance fund.** (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4) of this section.

(2) (a) The fund consists of amounts received by the commissioner from:

(i) persons who have violated any provision of parts 1 through 3 of this chapter;

(ii) persons who have voluntarily contributed to the fund; and

(iii) a portion of fees collected under 30-10-209(1)(b) as provided in 30-10-209(6)(b).

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under this chapter and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under this part.

(5) Whenever a claimant is paid from the securities restitution assistance fund pursuant to this part, the securities restitution assistance fund is subrogated, to the extent of the payment to the claimant, to the rights of the claimant to any restitution ordered by the court beyond the amount that would make the claimant whole. The commissioner may, on behalf of the securities restitution assistance fund, file any document in a court of competent jurisdiction to enforce this right. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History: En. Sec. 4, Ch. 58, L. 2011; amd. Sec. 3, Ch. 66, L. 2013; amd. Sec. 5, Ch. 286, L. 2013; amd. Sec. 3, Ch. 157, L. 2023.**

**30-10-1005.** *(Temporary)* **Eligibility.** (1) The following victims are eligible for restitution assistance:

(a) a natural person who is a resident of Montana at the time the offense is committed; or

(b) a person, other than a natural person, domiciled in Montana at the time the offense is committed.

(2) The commissioner may not award securities restitution assistance under this part:

(a) to more than one claimant per victim;

(b) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due; or

(c) if there was no award of restitution in the final order.

(3) If an award of restitution in a final order is overturned on appeal, the commissioner may not award restitution assistance under this part.

(4) If, after the commissioner has made a securities restitution assistance award from the fund under this part, the restitution award in the final order is overturned on appeal and

all legal remedies have been exhausted, the claimant shall forfeit the restitution assistance awarded under this part. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History:** **En. Sec. 5, Ch. 58, L. 2011; amd. Sec. 7, Ch. 8, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 7, Ch. 8, L. 2025. Amendment effective October 1, 2025.

**30-10-1006.** *(Temporary)* **Application for restitution assistance — maximum amount of restitution assistance award.** (1) A person who is eligible for restitution assistance under this part may submit an application, in a manner and form prescribed by the commissioner, to the department.

(2) An application must be received by the department within 2 years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subsection (4), the maximum award from the fund for each claimant is the lesser of $25,000 or 25% of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the fund is the lesser of $50,000 or 50% of the amount of unpaid restitution awarded in the final order. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History:** **En. Sec. 6, Ch. 58, L. 2011; amd. Sec. 5, Ch. 28, L. 2015.**

**30-10-1007.** *(Temporary)* **False application — penalties — statute of limitations.** (1) A claimant who knowingly files or causes to be filed an application for restitution assistance or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all restitution assistance provided from the fund.

(2) The commissioner may levy a fine of up to $10,000 on a claimant found to be in violation of subsection (1).

(3) A proceeding to determine a violation of subsection (1) must be in accordance with the contested case proceedings in the Montana Administrative Procedure Act, Title 2, chapter 4, parts 6 and 7.

(4) Notwithstanding the statutes of limitations provided in 30-10-305 through 30-10-307, any proceeding to determine a violation of subsection (1) of this section must be initiated within 2 years of the date on which the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not initiate a proceeding under this subsection more than 5 years after the date of the violation. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History:** **En. Sec. 7, Ch. 58, L. 2011.**

**30-10-1008.** *(Temporary)* **Rulemaking authority.** The commissioner may adopt rules regarding the department's processes for:

(1) reviewing applications for securities restitution assistance awards;

(2) making recommendations to the commissioner; and

(3) suspending awards or making a proportional payment of awards if the fund balance approaches zero. *(Terminates June 30, 2027—secs. 3, 4, Ch. 404, L. 2021.)*

**History:** **En. Sec. 8, Ch. 58, L. 2011.**

## Part 11

## Whistleblower Award and Protection Act

**30-10-1101.** **Short title.** This part may be cited as the "Whistleblower Award and Protection Act".

**History:** **En. Sec. 1, Ch. 76, L. 2021.**

**30-10-1102.** **Purpose.** The Whistleblower Award and Protection Act provides monetary awards to whistleblowers and provides protection for those who make whistleblower complaints.

**History:** **En. Sec. 2, Ch. 76, L. 2021.**

**30-10-1103. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" has the meaning provided in 30-10-103.

(2) (a) "Monetary sanction" means any money, including penalties, disgorgement, and interest ordered to be paid as a result of an administrative or judicial action.

(b) The term does not include restitution.

(3) "Original information" means information that is:

(a) derived from the independent knowledge or analysis of a whistleblower;

(b) not already known to the commissioner from any other source, unless the whistleblower is the original source of the information;

(c) not exclusively derived from an allegation made in an administrative or judicial hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and

(d) provided to the commissioner for the first time after March 24, 2021.

(4) "Whistleblower" means an individual who, alone or jointly with others, provides the state or other law enforcement agency with information pursuant to the provisions set forth in this part, and the information relates to a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur.

**History: En. Sec. 3, Ch. 76, L. 2021; amd. Sec. 7, Ch. 166, L. 2023.**

**30-10-1104. Authority to make whistleblower award.** Subject to the provisions of this part, the commissioner may award an amount to one or more whistleblowers who voluntarily provide original information in writing, and in the form and manner required by the commissioner that leads to the successful enforcement of an administrative or judicial action under Title 30, chapter 10.

**History: En. Sec. 4, Ch. 76, L. 2021.**

**30-10-1105. Anonymous whistleblower complaints.** (1) An individual may make an anonymous whistleblower complaint.

(2) Any individual who anonymously makes a claim for a whistleblower award must be represented by counsel at the time of an award in 30-10-1104 in order to verify qualification for the award. Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the commissioner may require, directly or through counsel for the whistleblower. The identity of the whistleblower must remain protected from public disclosure as stated in 30-10-1111(7) and subsection (1) of this section.

**History: En. Sec. 5, Ch. 76, L. 2021.**

**30-10-1106. Amount of whistleblower award.** If the commissioner determines to make one or more awards under 30-10-1104, the aggregate amount of awards that may be awarded in connection with an administrative or judicial action may not be less than 10% or more than 30% of the monetary sanctions collected in the related administrative or judicial action.

**History: En. Sec. 6, Ch. 76, L. 2021.**

**30-10-1107. Discretion to determine amount of whistleblower award.** The determination of the amount of an award made under this part is in the discretion of the commissioner consistent with 30-10-1106 and 30-10-1109.

**History: En. Sec. 7, Ch. 76, L. 2021.**

**30-10-1108. Source of payment of whistleblower award.** (1) The commissioner is authorized to order that a whistleblower award is paid:

(a) directly to a known whistleblower; or

(b) for an anonymous whistleblower, to counsel for the whistleblower as provided in 30-10-1106, who shall distribute the award to the anonymous whistleblower.

(2) Any whistleblower award under this part must be paid solely from the monetary sanction collected in the related administrative or judicial action and has first priority over other payment or disbursement.

**History: En. Sec. 8, Ch. 76, L. 2021.**

**30-10-1109. Factors used to determine amount of whistleblower award.** In determining the amount of an award under this part, the commissioner shall consider:

(1) the significance of the original information provided by the whistleblower to the success of the administrative or judicial action;

(2) the degree of assistance provided by the whistleblower in connection with the administrative or judicial action;

(3) the interest of the commissioner in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and

(4) any other factors the commissioner considers relevant.

**History:** **En. Sec. 9, Ch. 76, L. 2021.**

**30-10-1110. Disqualification from award.** The commissioner may not provide an award to a whistleblower under this section if the whistleblower:

(1) is convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award;

(2) acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates 15 U.S.C. 78j-1;

(3) fails to submit information to the commissioner in the form that the commissioner may prescribe;

(4) knowingly makes a false, fictitious, or fraudulent statement or misrepresentation as part of, or in connection with, the original information provided or the administrative or judicial action for which the original information was provided;

(5) in the whistleblower's submission, its other dealings with the commissioner, or in its dealings with another authority in connection with a related action, knowingly makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the commissioner or another authority in connection with a related action;

(6) knowingly provides original information that is false, fictitious, or fraudulent;

(7) has a legal duty to report the original information to the commissioner;

(8) is, or was at the time the whistleblower acquired the original information submitted to the commissioner, a member, officer, or employee of the office of the state auditor, the United States securities and exchange commission, any securities regulatory authority of another state, a self-regulatory organization, the public company accounting oversight board, or any law enforcement organization;

(9) is, or was at the time the whistleblower acquired the original information submitted to the commissioner, a member, officer, or employee of a foreign government, of any political subdivision, department, agency, or instrumentality of a foreign government, or of any other foreign financial regulatory authority as that term is defined in 15 U.S.C. 78c(a)(52);

(10) is the spouse, parent, child, or sibling of the commissioner or an employee of the office of the state auditor or resides in the same household as the commissioner or an employee of the office of the state auditor; or

(11) directly or indirectly acquires the original information provided to the commissioner from a person:

(a) who is subject to subsection (2), unless the information is not excluded from that person's use, or provides the commissioner with information about possible violations involving that person;

(b) who is a person described in subsection (8), (9), or (10); or

(c) with the intent to evade any provision of this part.

**History:** **En. Sec. 10, Ch. 76, L. 2021.**

**30-10-1111. Protection of whistleblowers and internal reporters.** (1) An employer may not terminate, discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner retaliate against an individual because of any lawful act done by the individual:

(a) in providing information to the state or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur;

(b) in initiating, testifying in, or assisting in any investigation or administrative or judicial action of the commissioner, the office of the state auditor, or other law enforcement agency based upon or related to such information concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder;

(c) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7201 et seq., the Securities Act of 1933, 15 U.S.C. 77a, et seq., the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., 18 U.S.C. 1513(e), any other law, rule, or regulation subject to the jurisdiction of the United States securities and exchange commission or the Montana Securities Act or a rule adopted thereunder; or

(d) in making disclosures to a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) regarding matters subject to the jurisdiction of the commissioner, the office of the state auditor, or the United States securities and exchange commission.

(2) Notwithstanding subsection (1), an individual is not protected under this section if:

(a) the individual knowingly makes a false, fictitious, or fraudulent statement or misrepresentation;

(b) the individual uses a false writing or document knowing that the writing or document contains false, fictitious, or fraudulent information; or

(c) the individual knows that the disclosure is of original information that is false, fictitious, or fraudulent.

(3) An individual who alleges any act of retaliation in violation of subsection (1) may bring an action for the relief provided in subsection (6) in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection (3) may be served at any place in the United States.

(5) An action under subsection (3) must be brought within:

(a) 3 years after the date on which the violation of subsection (1) occurred; or

(b) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subsection (1), but not more than 6 years after the date on which the violation occurred.

(6) A court may award as relief for an individual prevailing in an action brought under this section:

(a) reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;

(b) two times the amount of backpay otherwise owed to the individual, with interest;

(c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

(d) actual damages;

(e) an injunction to restrain a violation; or

(f) any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under Title 2, chapter 6, parts 10 through 12. This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) A person may not take any action to impede an individual from communicating directly with the commissioner's staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(a) agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(b) information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in this part may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section diminishes the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement.

**History: En. Sec. 11, Ch. 76, L. 2021.**

# CHAPTER 11
# SALES

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**Chapter Cross-References**

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

# Part 1
## Sales and Exchanges

**Part Cross-References**

Execution sale, 25-13-701.
Sale under claim and delivery proceeding, 27-17-404.
Sale under attachment proceeding, 27-18-801 through 27-18-803.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.
Montana Retail Installment Sales Act, Title 31, ch. 1, part 2.
Sale after mortgage foreclosure, 71-1-222.
Sale of agricultural products generally, Title 80, ch. 11.
Regulation of sale of milk, 81-23-102.

**30-11-101. Sale defined.** Sale is a contract by which, for a pecuniary consideration called a price, one transfers to another an interest in property.

**History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R.C.M. 1921; Cal. Civ. C. Sec. 1721; Field Civ. C. Sec. 855; re-en. Sec. 7581, R.C.M. 1935; R.C.M. 1947, 74-101.**

**Cross-References**

Uniform Commercial Code — sales, Title 30, ch. 2.
Application to exchanges, 30-11-113.
Auction sales, Title 30, ch. 11, part 5.

**30-11-102. Subject of sale.** The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

**History: En. Sec. 2311, Civ. C. 1895; re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. 7582, R.C.M. 1921; Cal. Civ. C. Sec. 1722; Field Civ. C. Sec. 856; re-en. Sec. 7582, R.C.M. 1935; R.C.M. 1947, 74-102.**

**30-11-103. Agreement for sale.** An agreement for sale is either:

(1) an agreement to sell;
(2) an agreement to buy; or
(3) a mutual agreement to sell and buy.

**History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R.C.M. 1921; Cal. Civ. C. Sec. 1726; Field Civ. C. Sec. 857; re-en. Sec. 7583, R.C.M. 1935; R.C.M. 1947, 74-103.**

**Cross-References**

Contracts, Title 28, ch. 2.

**30-11-104. Agreement to sell.** An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

**History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R.C.M. 1921; Cal. Civ. C. Sec. 1727; Field Civ. C. Sec. 858; re-en. Sec. 7584, R.C.M. 1935; R.C.M. 1947, 74-104.**

**30-11-105. Agreement to buy.** An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

**History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R.C.M. 1921; Cal. Civ. C. Sec. 1728; Field Civ. C. Sec. 859; re-en. Sec. 7585, R.C.M. 1935; R.C.M. 1947, 74-105.**

**30-11-106. Agreement to sell and buy.** An agreement to sell and buy is a contract by which a person engages to transfer the title to a certain thing to another, who engages to accept the thing from the seller and to pay a price for the thing.

**History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R.C.M. 1921; Cal. Civ. C. Sec. 1729; Field Civ. C. Sec. 860; re-en. Sec. 7586, R.C.M. 1935; R.C.M. 1947, 74-106; amd. Sec. 905, Ch. 56, L. 2009.**

**30-11-107. What may be the subject of the contract.** Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

**History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R.C.M. 1921; Cal. Civ. C. Sec. 1730; Field Civ. C. Sec. 861; re-en. Sec. 7587, R.C.M. 1935; R.C.M. 1947, 74-107.**

**30-11-108. Agreement to sell real property.** An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

**History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R.C.M. 1921; Cal. Civ. C. Sec. 1731; Based on Field Civ. C. Sec. 862; re-en. Sec. 7588, R.C.M. 1935; R.C.M. 1947, 74-108.**

**Cross-References**

Transfer of real property, Title 70, ch. 20.
Lien of seller of real property, 71-3-1301 through 71-3-1303.

**30-11-109. When usual common-law covenants required by contracts.** An agreement on the part of a seller of real property to give the usual covenants binds the seller to insert in the grant covenants of "seisin", "quiet enjoyment", "further assurance", "general warranty", and "against encumbrances".

**History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R.C.M. 1921; Cal. Civ. C. Sec. 1733; Field Civ. C. Sec. 863; re-en. Sec. 7589, R.C.M. 1935; R.C.M. 1947, 74-109; amd. Sec. 906, Ch. 56, L. 2009.**

**Cross-References**

What included in authority to sell real property, 28-10-422.
Covenants running with land, Title 70, ch. 17, part 2.
Implied covenants, 70-20-304.

**30-11-110. Form of covenants.** The covenants mentioned in 30-11-109 must be in substance as follows:

"The party of the first part covenants with the party of the second part that the party of the first part is now seized in fee simple of the property granted; that the party of the second part shall enjoy the property without any lawful disturbance; that the property is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the property through or for the party of the first part will, on demand, execute and deliver to the party of the second part, at the expense of the party of the second part, any further assurance of the property that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the property against every person lawfully claiming the property."

**History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R.C.M. 1921; Cal. Civ. C. Sec. 1734; Field Civ. C. Sec. 864; re-en. Sec. 7590, R.C.M. 1935; R.C.M. 1947, 74-110; amd. Sec. 907, Ch. 56, L. 2009.**

**Cross-References**

Damages for breach of covenant, 27-1-316.
What included in authority to sell real property, 28-10-422.
Covenants running with land, Title 70, ch. 17, part 2.
Implied covenants, 70-20-304.

**30-11-111. Contract for sale of real property.** An agreement for the sale of real property or of any interest in real property is not valid unless the agreement, or some note or memorandum of the agreement, is in writing and subscribed by the party to be charged or the party's agent authorized in writing. However, this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance of the agreement.

**History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R.C.M. 1921; Cal. Civ. C. Sec. 1741; Based on Field Civ. C. Sec. 867; re-en. Sec. 7593, R.C.M. 1935; R.C.M. 1947, 74-203; amd. Sec. 908, Ch. 56, L. 2009.**

**Cross-References**

What contracts must be in writing, 28-2-903.
Final written expression — parol or extrinsic evidence, 30-2-202.
Transfer of real property, Title 70, ch. 20.

**30-11-112. Exchange defined.** Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing nor both things being money only.

**History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R.C.M. 1921; Cal. Civ. C. Sec. 1804; Field Civ. C. Sec. 903; re-en. Sec. 7632, R.C.M. 1935; R.C.M. 1947, 74-501.**

**Cross-References**

Price payable in money, goods, realty, or otherwise, 30-2-304.

**30-11-113. Sale equivalent to exchange.** The provisions of the sections on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing that the party gives and of a buyer as to that which the party takes.

**History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R.C.M. 1921; Cal. Civ. C. Sec. 1806; Field Civ. C. Sec. 905; re-en. Sec. 7634, R.C.M. 1935; R.C.M. 1947, 74-503; amd. Sec. 909, Ch. 56, L. 2009.**

**30-11-114. Warranty of money.** On an exchange of money, each party warrants the genuineness of the money given by the party.

**History:** En. Sec. 2433, Civ. C. 1895; re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. 7635, R.C.M. 1921; Cal. Civ. C. Sec. 1807; Field Civ. C. Sec. 906; re-en. Sec. 7635, R.C.M. 1935; R.C.M. 1947, 74-504; amd. Sec. 910, Ch. 56, L. 2009.

**Cross-References**

Money, 30-3-107.

**30-11-115. Uniform Commercial Code overrides.** The provisions of this part do not apply to exchanges subject to the Uniform Commercial Code.

**History:** En. 74-505 by Sec. 11-151, Ch. 264, L. 1963; R.C.M. 1947, 74-505; amd. Sec. 5, Ch. 137, L. 1979.

**Cross-References**

Uniform Commercial Code — sales, Title 30, ch. 2.

## Part 2
## Seller's Responsibilities

**30-11-201. When seller must act as depositary.** After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that the seller shall keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

**History:** En. Sec. 2350, Civ. C. 1895; re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. 7598, R.C.M. 1921; Cal. Civ. C. Sec. 1748; Field Civ. C. Sec. 869; re-en. Sec. 7598; R.C.M. 1935; R.C.M. 1947, 74-301; amd. Sec. 911, Ch. 56, L. 2009.

**Cross-References**

Attachment of property covered by security interest, 27-18-413.
Uniform Commercial Code — sales, Title 30, ch. 2.
Duty of care — contractual limitation of warehouseman's liability, 30-7-204.
Recovery of livestock, 81-8-312.

**30-11-202. When seller may resell.** If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale or may enforce the seller's lien for the price in the manner prescribed by the law on liens.

**History:** En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R.C.M. 1921; Cal. Civ. C. Sec. 1749; Field Civ. C. Sec. 870; re-en. Sec. 7599, R.C.M. 1935; R.C.M. 1947, 74-302; amd. Sec. 912, Ch. 56, L. 2009.

**Cross-References**

Seller's remedies in general, 30-2-703.
Seller's resale including contract for resale, 30-2-706.

**30-11-203. Delivery on demand.** A person who sells personal property, whether it was in the person's possession at the time of sale or not, shall put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand, unless the person has a lien on the property.

**History:** En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R.C.M. 1921; Cal. Civ. C. Sec. 1753; Field Civ. C. Sec. 871; re-en. Sec. 7600, R.C.M. 1935; R.C.M. 1947, 74-303; amd. Sec. 913, Ch. 56, L. 2009.

**Cross-References**

Manner of seller's tender of delivery, 30-2-503.
Effect of seller's tender — delivery on condition, 30-2-507.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

**30-11-204. Delivery — where made.** Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

**History:** En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R.C.M. 1921; Cal. Civ. C. Sec. 1754; Field Civ. C. Sec. 872; re-en. Sec. 7601, R.C.M. 1935; R.C.M. 1947, 74-304.

**Cross-References**

Absence of specified place for delivery, 30-2-308.
Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

**30-11-205. Expense of transportation.** A person who sells personal property shall bring it to the person's own door or another convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

**History:** En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R.C.M. 1921; Cal. Civ. C. Sec. 1755; Field Civ. C. Sec. 873; re-en. Sec. 7602, R.C.M. 1935; R.C.M. 1947, 74-305; amd. Sec. 914, Ch. 56, L. 2009.

**Cross-References**

F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.

**30-11-206. Notice of election as to delivery.** When either party to a contract of sale has an option as to the time, place, or manner of delivery, the party shall give the other party reasonable notice of the party's choice. If the party does not give notice within a reasonable time, the right of option is waived.

**History:** En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R.C.M. 1921; Cal. Civ. C. Sec. 1756; Field Civ. C. Sec. 874; re-en. Sec. 7603, R.C.M. 1935; R.C.M. 1947, 74-306; amd. Sec. 915, Ch. 56, L. 2009.

**Cross-References**

Absence of specified place for delivery, 30-2-308.
Manner of seller's tender of delivery, 30-2-503.
Effect of seller's tender — delivery on condition, 30-2-507.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

**30-11-207. Transportation.** If a seller agrees to send the thing sold to the buyer, the seller shall follow the directions of the buyer as to the manner of sending or it will be at the seller's own risk during its transportation. If the seller follows the directions or if, in the absence of special directions, the seller uses ordinary care in forwarding the thing, it is at the risk of the buyer.

**History:** En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R.C.M. 1921; Cal. Civ. C. Sec. 1757; Field Civ. C. Sec. 875; re-en. Sec. 7604, R.C.M. 1935; R.C.M. 1947, 74-307; amd. Sec. 916, Ch. 56, L. 2009.

**Cross-References**

F.O.B. and F.A.S. terms, 30-2-319.
C.I.F. and C.&F. terms, 30-2-320.

**30-11-208. Delivery to be within reasonable hours.** The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

**History:** En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R.C.M. 1921; Cal. Civ. C. Sec. 1758; Field Civ. C. Sec. 876; re-en. Sec. 7605, R.C.M. 1935; R.C.M. 1947, 74-308.

**Cross-References**

Manner of seller's tender of delivery, 30-2-503.
Cure by seller of improper tender or delivery — replacement, 30-2-508.

**30-11-209. Warranty defined.** A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

**History:** En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R.C.M. 1921; Cal. Civ. C. Sec. 1763; Field Civ. C. Sec. 877; re-en. Sec. 7606, R.C.M. 1935; R.C.M. 1947, 74-309.

**Cross-References**

Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

**30-11-210. No implied warranty in mere contract of sale.** Except as prescribed by this part, a mere contract of sale or agreement to sell does not imply a warranty.

**History:** En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R.C.M. 1921; Cal. Civ. C. Sec. 1764; Field Civ. C. Sec. 878; re-en. Sec. 7607, R.C.M. 1935; R.C.M. 1947, 74-310.

**Cross-References**

Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.
Third-party beneficiaries of warranties express or implied, 30-2-318.

**30-11-211. Warranty of title to personal property.** A person who sells or agrees to sell personal property as the person's own warrants that the person has a good and unencumbered title to the property.

**History:** En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R.C.M. 1921; Cal. Civ. C. Sec. 1765; Field Civ. C. Sec. 879; re-en. Sec. 7608, R.C.M. 1935; R.C.M. 1947, 74-311; amd. Sec. 917, Ch. 56, L. 2009.

**Cross-References**

Warranty of title and against infringement — buyer's obligation against infringement, 30-2-312.

**30-11-212. Warranty on sale by sample.** One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.

**History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R.C.M. 1921; Cal. Civ. C. Sec. 1766; Field Civ. C. Sec. 880; re-en. Sec. 7609, R.C.M. 1935; R.C.M. 1947, 74-312.**

**Cross-References**

Express warranties by affirmation, promise, description, or sample, 30-2-313.
Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.

**30-11-213. Warranty when seller knows that buyer relies on seller's statements.** A person who sells or agrees to sell personal property knowing that the buyer relies upon the person's advice or judgment warrants to the buyer that neither the seller nor any agent employed by the seller in the transaction knows the existence of any fact concerning the thing sold that would, to the seller's knowledge, destroy the buyer's inducement to buy.

**History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R.C.M. 1921; Cal. Civ. C. Sec. 1767; Field Civ. C. Sec. 881; re-en. Sec. 7610, R.C.M. 1935; R.C.M. 1947, 74-313; amd. Sec. 918, Ch. 56, L. 2009.**

**Cross-References**

Express warranties by affirmation, promise, description, or sample, 30-2-313.
Implied warranty — fitness for particular purpose, 30-2-315.

**30-11-214. Warranty when merchandise not in existence.** One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care.

**History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R.C.M. 1921; Cal. Civ. C. Sec. 1768; Field Civ. C. Sec. 882; re-en. Sec. 7611, R.C.M. 1935; R.C.M. 1947, 74-314.**

**Cross-References**

Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.

**30-11-215. Manufacturer's warranty against latent defects.** A person who sells or agrees to sell an article of the person's own manufacture warrants the article to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture and also that the person or the person's agent in the manufacture has not knowingly used improper materials in the manufacture.

**History: En. Sec. 2376, Civ. C. 1895; re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. 7612, R.C.M. 1921; Cal. Civ. C. Sec. 1769; Field Civ. C. Sec. 883; re-en. Sec. 7612, R.C.M. 1935; R.C.M. 1947, 74-315; amd. Sec. 919, Ch. 56, L. 2009.**

**Cross-References**

Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.

**30-11-216. Warranty of fitness for particular purpose.** One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose.

**History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R.C.M. 1921; Cal. Civ. C. Sec. 1770; Field Civ. C. Sec. 884; re-en. Sec. 7613, R.C.M. 1935; R.C.M. 1947, 74-316.**

**Cross-References**

Implied warranty — fitness for particular purpose, 30-2-315.

**30-11-217. Warranty when thing cannot be examined by buyer.** One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable.

**History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R.C.M. 1921; Cal. Civ. C. Sec. 1771; Field Civ. C. Sec. 885; re-en. Sec. 7614, R.C.M. 1935; R.C.M. 1947, 74-317.**

**Cross-References**

Express warranties by affirmation, promise, description, or sample, 30-2-313.
Implied warranty — merchantability — usage of trade, 30-2-314.
Implied warranty — fitness for particular purpose, 30-2-315.

**30-11-218. Warranty that trademark is genuine.** One who sells or agrees to sell any article to which there is affixed or attached a trademark thereby warrants that trademark to be genuine and lawfully used.

**History: En. Sec. 2379, Civ. C. 1895; re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. 7615, R.C.M. 1921; Cal. Civ. C. Sec. 1772; Field Civ. C. Sec. 886; re-en. Sec. 7615, R.C.M. 1935; R.C.M. 1947, 74-318.**

**Cross-References**

Trademarks, Title 30, ch. 13, part 3.

**30-11-219. Warranty of truth of other marks.** One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured, or prepared thereby warrants the truth thereof.

**History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R.C.M. 1921; Cal. Civ. C. Sec. 1773; Field Civ. C. Sec. 887; re-en. Sec. 7616, R.C.M. 1935; R.C.M. 1947, 74-319.**

**Cross-References**

Express warranties by affirmation, promise, description, or sample, 30-2-313.

**30-11-220. Warranty on sale of written instrument.** A person who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act warrants that the person does not have knowledge of any facts that tend to prove the instrument worthless, such as the insolvency of any of the parties when that is material, the extinction of its obligations, or its invalidity for any cause.

**History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R.C.M. 1921; Cal. Civ. C. Sec. 1774; Field Civ. C. Sec. 888; re-en. Sec. 7617, R.C.M. 1935; R.C.M. 1947, 74-320; amd. Sec. 920, Ch. 56, L. 2009.**

**30-11-221. Warranty on sale of goodwill.** A person who sells the goodwill of a business warrants that the person will not endeavor to draw off any of the customers.

**History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec. 7619, R.C.M. 1921; Cal. Civ. C. Sec. 1776; Field Civ. C. Sec. 890; re-en. Sec. 7619, R.C.M. 1935; R.C.M. 1947, 74-322; amd. Sec. 921, Ch. 56, L. 2009.**

**Cross-References**

Goodwill of business, 30-13-121.
Goodwill transferable, 30-13-122.

**30-11-222. Warranty upon judicial sale.** Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

**History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R.C.M. 1921; Cal. Civ. C. Sec. 1777; Field Civ. C. Sec. 891; re-en. Sec. 7620, R.C.M. 1935; R.C.M. 1947, 74-323.**

**Cross-References**

Sale on execution, Title 25, ch. 13, part 7.

**30-11-223. Effect of general warranty.** A general warranty does not extend to defects inconsistent with the warranty of which the buyer was aware or that were easily discernible by the buyer without the exercise of peculiar skill, but the warranty extends to all other defects.

**History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R.C.M. 1921; Cal. Civ. C. Sec. 1778; Field Civ. C. Sec. 892; re-en. Sec. 7621, R.C.M. 1935; R.C.M. 1947, 74-324; amd. Sec. 922, Ch. 56, L. 2009.**

**Cross-References**

Exclusion or modification of warranties, 30-2-316.
Cumulation and conflict of warranties express or implied, 30-2-317.

**30-11-224. Uniform Commercial Code overrides.** This part shall not apply to sales subject to the Uniform Commercial Code.

**History: En. 74-325 by Sec. 11-150, Ch. 264, L. 1963; R.C.M. 1947, 74-325.**

**Cross-References**

Uniform Commercial Code — sales, Title 30, ch. 2.

## Part 3
## Merchant's Rights

**30-11-301. Definitions.** (1) The term "merchandise" shall mean any personal property capable of manual delivery displayed, held, or offered for sale by a merchant.

(2) The term "merchant" as used in this part shall mean an owner or operator and the agent, consignee, employee, lessee, or officer of an owner or operator of any merchant's premises.

(3) The term "premises" shall mean any establishment or part thereof wherein merchandise is displayed, held, or offered for sale.

**History:** **En. Sec. 1, Ch. 11, L. 1957; R.C.M. 1947, 64-212.**

**30-11-302. Obligation to keep merchandise in full view.** Any merchant has the right to request any individual on the merchant's premises to place or keep in full view any merchandise that the individual may have removed, or that the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other purpose. A merchant may not be criminally or civilly liable for slander, false arrest, or otherwise on account of having made such a request.

**History:** **En. Sec. 2, Ch. 11, L. 1957; R.C.M. 1947, 64-213; amd. Sec. 923, Ch. 56, L. 2009.**

**Cross-References**

Theft, 45-6-301.

## Part 4
## Commission Merchants

**Part Cross-References**

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.
Agricultural commodities generally, Title 80, ch. 4, part 4.
Warehouse operators of agricultural commodities, Title 80, ch. 4, part 5.

**30-11-401. Commission merchants to acknowledge receipt of property.** Any persons doing business in this state as commission merchants or who shall receive from any person of this state agricultural or horticultural products or farm produce raised in this state to sell on commission shall immediately, upon receipt of such goods, send to the consignor or consignors a statement in writing showing what property has been received.

**History:** **En. Sec. 1, Ch. 2, L. 1909; re-en. Sec. 4183, R.C.M. 1921; re-en. Sec. 4183, R.C.M. 1935; R.C.M. 1947, 66-701.**

**Cross-References**

Sale to pay costs of storage, 70-6-411.

**30-11-402. Statement to consignor on sale of property.** Whenever any commission merchant or person receiving any property as mentioned in the preceding section shall sell the same or 25% thereof, such commission merchant or person shall immediately render a true statement to the consignor, showing what portion of such consignment has been sold, to whom sold, and the price received therefor.

**History:** **En. Sec. 2, Ch. 2, L. 1909; re-en. Sec. 4184, R.C.M. 1921; re-en. Sec. 4184, R.C.M. 1935; R.C.M. 1947, 66-702.**

**Cross-References**

Sale to pay costs of storage, 70-6-411.

**30-11-403. Penalties for violation.** Any person engaged in selling any property as herein specified, who fails or neglects to comply with any of the provisions of 30-11-401 and 30-11-402 or who shall make a false report or statement of the matters herein required, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or by both such fine and imprisonment.

**History:** **En. Sec. 3, Ch. 2, L. 1909; re-en. Sec. 4185, R.C.M. 1921; re-en. Sec. 4185, R.C.M. 1935; R.C.M. 1947, 66-703.**

## Part 5
## Auction Sales and Auctioneers

**30-11-501. Sale by auction defined.** A sale by auction is a sale by public outcry to the highest bidder on the spot.

**History:** **En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R.C.M. 1921; Cal. Civ. C. Sec. 1792; Field Civ. C. Sec. 896; re-en. Sec. 7625, R.C.M. 1935; Sec. 66-213, R.C.M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977; R.C.M. 1947, 74-701.**

**30-11-502. Sale by auction.** (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer announces the sale by the fall of the hammer or other customary manner. When a bid is made while the hammer is falling in acceptance of a prior bid, the auctioneer may reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) An auction sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until the auctioneer announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless a bid is not made within a reasonable time. In either case a bidder may retract a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been given that liberty for the bidding is reserved, the buyer may avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

**History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R.C.M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977; R.C.M. 1947, 74-702; amd. Sec. 924, Ch. 56, L. 2009.**

**Cross-References**

Highway equipment by bid, 18-6-103.
Firm offers, 30-2-205.
Enforcement of lien — sale (agisters' lien), 71-3-1203.
Enforcement of lien (hotel lien), 71-3-1402.
Sale of confiscated birds and animals, 87-1-511.

**30-11-503. Sale under written conditions.** When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for the auctioneer's own protection.

**History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R.C.M. 1921; Cal. Civ. C. Sec. 1795; Field Civ. C. Sec. 899; re-en. Sec. 7628, R.C.M. 1935; Sec. 66-216, R.C.M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977; R.C.M. 1947, 74-703; amd. Sec. 925, Ch. 56, L. 2009.**

**Cross-References**

What contracts must be in writing, 28-2-903.

**30-11-504. Auctioneer's memorandum of sale.** When property is sold by auction, an entry made by the auctioneer in the sale book at the time of the sale specifying the name of the person for whom the auctioneer sells, the thing sold, the price, the terms of sale, and the name of the buyer binds both the parties in the same manner as if made by the parties.

**History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R.C.M. 1921; Cal. Civ. C. Sec. 1798; Field Civ. C. Sec. 902; re-en. Sec 7631, R.C.M. 1935; Sec. 66-219, R.C.M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977; R.C.M. 1947, 74-704; amd. Sec. 926, Ch. 56, L. 2009.**

**Cross-References**

What contracts must be in writing, 28-2-903.
Certificate of sale, 87-1-512.

**30-11-505. Book of sales.** (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

**History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R.C.M. 1921; Cal. Pol. C. Sec. 3306; re-en. Sec. 4155, R.C.M. 1935; Sec. 66-211, R.C.M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977; R.C.M. 1947, 74-705.**

**Cross-References**

Certificate of sale, 87-1-512.

**30-11-506. Auctioneer's authority from the seller.** An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

(1) to sell by public auction to the highest bidder;

(2) to sell for cash only, except for articles usually sold on credit at auction;

(3) to warrant as an agent pursuant to 28-10-421;

(4) to prescribe reasonable rules and terms of sale;
(5) to deliver the thing sold upon payment of the price;
(6) to collect the price; and
(7) to do whatever else is necessary, proper, and usual in the ordinary course of business for effecting these purposes.

**History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R.C.M. 1921; Cal. Civ. C. Sec. 2362; Field Civ. C. Sec. 1264; re-en. Sec. 7976, R.C.M. 1935; Sec. 66-201, R.C.M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977; R.C.M. 1947, 74-706.**

**30-11-507. Auctioneer's authority from the bidder.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 30-11-504.

**History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R.C.M. 1921; Cal. Civ. C. Sec. 2363; Field Civ. C. Sec. 1265; re-en. Sec. 7977, R.C.M. 1935; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R.C.M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977; R.C.M. 1947, 74-707.**

**30-11-508. Auctioneer — authority and bond.** A citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this part for the faithful performance of the citizen's duties.

**History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R.C.M. 1921; Cal. Pol. C. Sec. 3284; re-en. Sec. 4147, R.C.M. 1935; Sec. 66-203, R.C.M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977; R.C.M. 1947, 74-708; amd. Sec. 927, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**30-11-509. Reciprocal privileges to nonresident auctioneers.** The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

**History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R.C.M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977; R.C.M. 1947, 74-709.**

**30-11-510. Bond and sureties — approval — filing.** (1) Bond must be payable to the state, with one or more sureties, in the sum of $5,000 and approved by the county clerk of the county in which the auctioneer resides and filed in the clerk's office.

(2) If the auctioneer is not a resident, the bond must be filed with the county clerk of the county of this state in which the auctioneer carries on the auctioneer's principal auction business.

**History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R.C.M. 1921; Cal. Pol. C. Sec. 3285; re-en. Sec. 4148, R.C.M. 1935; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R.C.M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977; R.C.M. 1947, 74-710; amd. Sec. 928, Ch. 56, L. 2009.**

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**30-11-511. Auctioneers ex officio.** (1) In any county without an auctioneer, the sheriff or a constable is ex officio auctioneer and is permitted to sell any property at public auction.

(2) The sheriff or constable is liable on the sheriff's or constable's official bond for any delinquency as the ex officio auctioneer.

**History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R.C.M. 1921; Cal. Pol. C. Sec. 3291; re-en. Sec. 4149, R.C.M. 1935; amd. Sec. 7, Ch. 253, L. 1975; Sec. 66-205, R.C.M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977; R.C.M. 1947, 74-711; amd. Sec. 929, Ch. 56, L. 2009.**

**30-11-512. Assistant — who may act and when.** (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed by law, or during a temporary absence from the city or county within which the individual is auctioneer, may employ an agent or employee to hold the auction in the auctioneer's name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts the auctioneer is responsible.

**History:** **En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R.C.M. 1921; Cal. Pol. C. Sec. 3292; re-en. Sec. 4150, R.C.M. 1935; Sec. 66-206, R.C.M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977; R.C.M. 1947, 74-712; amd. Sec. 930, Ch. 56, L. 2009.**

**30-11-513. Auctioneers to designate one place of business — partners.** (1) An auctioneer shall designate in writing with the county clerk one place at which the auctioneer will conduct auctions within any city.

(2) The auctioneer shall designate in the same document any partners in the business.

(3) The auctioneer may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

**History:** **En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R.C.M. 1921; Cal. Pol. C. Sec. 3302; re-en. Sec. 4151, R.C.M. 1935; Sec. 66-207, R.C.M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977; R.C.M. 1947, 74-713; amd. Sec. 931, Ch. 56, L. 2009.**

**30-11-514. Penalty.** A person convicted of violating a provision of this part shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition the person shall be liable for damages incurred by any aggrieved party by reason of the violation.

**History:** **En. 74-714 by Sec. 14, Ch. 263, L. 1977; R.C.M. 1947, 74-714; amd. Sec. 932, Ch. 56, L. 2009.**

**30-11-515. Enforcement.** The provisions of this part must be enforced by the county attorney of the county in which the violation occurred.

**History:** **En. 74-715 by Sec. 15, Ch. 263, L. 1977; R.C.M. 1947, 74-715; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 62, Ch. 483, L. 2001; amd. Sec. 11, Ch. 109, L. 2009.**

**30-11-516. Powers of cities and towns.** Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

**History:** **En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R.C.M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977; R.C.M. 1947, 74-716.**

**Cross-References**

Licensing discrimination by governmental agency prohibited, 49-3-204.

## Part 6
## Factors

**Part Cross-References**

Sale of fine art by art dealer, Title 22, ch. 2, part 5.

Agency, Title 28, ch. 10.

**30-11-601. Factor defined.** A factor is an agent who, in the pursuit of an independent calling, is employed by another person to sell property for that person and is vested by the person with the possession or control of the property or authorized to receive payment for the property from the purchaser.

**History:** **En. Sec. 2750, Civ. C. 1895; re-en. Sec. 5290, Rev. C. 1907; re-en Sec. 7805, R.C.M. 1921; Cal. Civ. C. Sec. 2026; Based on Field Civ. C. Sec. 1045; re-en. 7805, R.C.M. 1935; R.C.M. 1947, 2-401; amd. Sec. 933, Ch. 56, L. 2009.**

**30-11-602. Obedience required from factor.** A factor shall obey the instructions of the factor's principal to the same extent as any other employee, notwithstanding any advances the factor may have made to the principal upon the property consigned to the factor, except that if the principal forbids the factor to sell at the market price, the factor may, nevertheless, sell for the factor's reimbursement, after giving to the principal reasonable notice of the factor's intention to do so and of the time and place of sale, and proceeding in all respects as a pledgee.

**History:** **En. Sec. 2751, Civ. C. 1895; re-en. Sec. 5291, Rev. C. 1907; re-en Sec. 7806, R.C.M. 1921; Cal. Civ. C. Sec. 2027; Based on Field Civ. C. Sec. 1046; re-en. 7806, R.C.M. 1935; R.C.M. 1947, 2-402; amd. Sec. 934, Ch. 56, L. 2009.**

**Cross-References**

Agent not to exceed actual authority, 28-10-301.

Employee must obey employer, 39-2-404.

**30-11-603. Sales on credit.** A factor may sell property consigned to the factor on credit that is usual but, having once agreed with the purchaser upon the terms of credit, may not extend the terms.

**History:** En. Sec. 2752, Civ. C. 1895; re-en. Sec. 5292, Rev. C. 1907; re-en Sec. 7807, R.C.M. 1921; Cal. Civ. C. Sec. 2028; Based on Field Civ. C. Sec. 1047; re-en. 7807, R.C.M. 1935; R.C.M. 1947, 2-403; amd. Sec. 935, Ch. 56, L. 2009.

**Cross-References**

What included in authority to sell personal property, 28-10-421.
What included in authority to sell real property, 28-10-422.
Authority of agent to sell to receive price, 28-10-423.

**30-11-604. Liability of factor under guaranty commission.** A factor who charges the principal with a guaranty commission upon a sale assumes absolutely to pay the price when it falls due as if it were a debt of the factor's own and not as a mere guarantor for the purchaser. The factor does not assume any additional responsibility for the safety of the remittance of the proceeds.

**History:** En. Sec. 2753, Civ. C. 1895; re-en. Sec. 5293, Rev. C. 1907; re-en Sec. 7808, R.C.M. 1921; Cal. Civ. C. Sec. 2029; Based on Field Civ. C. Sec. 1048; re-en. 7808, R.C.M. 1935; R.C.M. 1947, 2-404; amd. Sec. 936, Ch. 56, L. 2009.

**Cross-References**

When agent responsible to third persons as principal, 28-10-702.
Guaranty defined, 28-11-101.
Knowledge or consent of principal not required, 28-11-102.

**30-11-605. Principal's consent needed to relieve factor from liability.** A factor who receives property for sale under a general agreement or usage to guarantee the sales or the remittance of the proceeds cannot be relieved from responsibility for the sale or remittance without the consent of the factor's principal.

**History:** En. Sec. 2754, Civ. C. 1895; re-en. Sec. 5294, Rev. C. 1907; re-en Sec. 7809, R.C.M. 1921; Cal. Civ. C. Sec. 2030; Based on Field Civ. C. Sec. 1049; re-en. 7809, R.C.M. 1935; R.C.M. 1947, 2-405; amd. Sec. 937, Ch. 56, L. 2009.

**30-11-606. Authority of factor.** In addition to the authority of agents in general, a factor has actual authority for the principal, unless specially restricted, to:

(1) insure property consigned to the factor uninsured;

(2) sell on credit anything entrusted to the factor for sale, except things that it is contrary to usage to sell on credit, but not to pledge, mortgage, or barter the things; and

(3) delegate the factor's authority to the factor's partner or servant but not to any person in an independent employment.

**History:** En. Sec. 3171, Civ. C. 1895; re-en. Sec. 5464, Rev. C. 1907; re-en Sec. 7979, R.C.M. 1921; Cal. Civ. C. Sec. 2368; Field Civ. C. Sec. 1267; re-en. 7979, R.C.M. 1935; R.C.M. 1947, 2-406; amd. Sec. 938, Ch. 56, L. 2009.

**30-11-607. Ostensible authority.** A factor has ostensible authority to deal with the property of the principal as the factor's own in transactions with persons not having notice of the actual ownership.

**History:** En. Sec. 3172, Civ. C. 1895; re-en. Sec. 5465, Rev. C. 1907; re-en Sec. 7980, R.C.M. 1921; Cal. Civ. C. Sec. 2369; Field Civ. C. Sec. 1268; re-en. 7980, R.C.M. 1935; R.C.M. 1947, 2-407; amd. Sec. 939, Ch. 56, L. 2009.

**Cross-References**

Actual versus ostensible agency, 28-10-103.
What authority agent has, 28-10-401.
Ostensible authority defined, 28-10-403.

## Part 7

## Canceled Dealership Contracts, Repurchase Requirements, and Dealer Data

**30-11-701. Definitions.** As used in this part, the following definitions apply:

(1) "Cancellation" or "canceled" means the cessation, termination, or discontinuance of a dealership contract. The term includes but is not limited to resignation, termination, surrender, discontinuance, nonrenewal, refusal to renew, or expiration of a dealership contract.

(2) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(3) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(5) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in 61-1-101;

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in 61-1-101, and repair parts;

(e) snowmobiles, as defined in 23-2-601, and repair parts;

(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and

(g) vessels, as defined in 61-1-101, detachable motors or engines used to propel vessels, and repair parts.

(6) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(7) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(8) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

**History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989; amd. Sec. 37, Ch. 542, L. 2005; amd. Sec. 1, Ch. 168, L. 2009; amd. Sec. 5, Ch. 283, L. 2019; amd. Sec. 5, Ch. 47, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 47, L. 2025. Amendment effective October 1, 2025.

**30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract.** (1) Upon cancellation of a written dealership contract between a retailer and a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, undamaged, and complete inventory items held by the dealer at the time of cancellation, including vehicles with less than 1,000 miles on the odometer, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) Upon cancellation of a written distribution contract entered into between a wholesaler and a manufacturer or distributor, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation, including vehicles with less than 1,000 miles on the odometer; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the retailer's or wholesaler's repurchase request. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

(4) A manufacturer or distributor has 30 days from the date of the repurchase request to complete, at the retailer's or wholesaler's place of business, an inventory, evaluation, and analysis of the items for which the retailer or wholesaler requests compensation under subsection (3). The retailer or wholesaler shall, on request, make all of the items available to the manufacturer or distributor, at the retailer's or wholesaler's place of business during normal business hours, to complete an inventory, evaluation, and analysis. The 30-day deadline must be tolled during delays caused by acts of God, fire, flood, blackouts, riots, or terrorist acts.

**History:** **En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991; amd. Sec. 6, Ch. 283, L. 2019.**

**30-11-703. Excepted inventory.** The following inventory is not subject to the repurchase requirements of 30-11-702:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor. However, inventory acquired by trade between or among dealers of the same wholesaler, manufacturer, or distributor in the ordinary course of business is subject to the repurchase requirements of 30-11-702.

**History:** **En. Sec. 3, Ch. 338, L. 1983; amd. Sec. 940, Ch. 56, L. 2009; amd. Sec. 7, Ch. 283, L. 2019.**

**30-11-704. Repurchase of inventory of deceased retailer or wholesaler.** If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in 30-11-702.

**History:** **En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.**

**Cross-References**

Heirs and devisees defined, 72-1-103.

**30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools.** Upon the cancellation of a dealership contract, a wholesaler, manufacturer, or distributor shall, at the retailer's request, pay the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, acquired from any source, because the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if a sign, item of special equipment, or special tool has a service agreement or if the sign, item of special equipment, or special tool is leased by the retailer, the amounts required to be paid upon termination of the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of removing, repairing damage caused by removal, transporting, handling, packing, and loading the signs, special equipment, and special tools.

**History: En. Sec. 1, Ch. 177, L. 2001; amd. Sec. 8, Ch. 283, L. 2019.**

**30-11-706 through 30-11-710 reserved.**

**30-11-711. Rights not affected.** (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

**History: En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.**

**Cross-References**

Security interest defined, 30-1-201.

**30-11-712. Civil liability.** If any wholesaler, manufacturer, or distributor fails or refuses to repurchase or reimburse a wholesaler for any inventory or a retailer for any inventory, signs, special equipment, or special tools as required by 30-11-702, the wholesaler, manufacturer, or distributor is liable in a civil action for:

(1) all sums required under this part;

(2) storage charges at the market rate for warehouse storage in the retailer's community plus any floor plan, interest, or similar inventory financing charges incurred by the retailer or wholesaler, commencing on the 31st day after the repurchase request;

(3) interest on all sums due from the date of the wholesaler's or retailer's request as provided in this section, at a rate calculated pursuant to 25-9-205 until paid; and

(4) the retailer's or wholesaler's attorney fees, court costs, and litigation expenses.

**History: En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985; amd. Sec. 9, Ch. 283, L. 2019.**

**30-11-713. Remedy as supplemental.** (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory, signs, special equipment, or special tools; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy provided in this part. An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in this part with regard to any inventory, parts, signs, special equipment, or special tools that are not included in contract remedies, provided that the retailer or wholesaler is not entitled to recover more than one time on any claim of loss or damage.

**History: En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985; amd. Sec. 941, Ch. 56, L. 2009; amd. Sec. 10, Ch. 283, L. 2019.**

**Cross-References**

Breach of contract — damages, 27-1-311.

**30-11-714 through 30-11-716 reserved.**

**30-11-717. Definitions.** As used in 30-11-718 through 30-11-720, and this section, the following definitions apply:

(1) "Authorized integrator" means any third party with whom a dealer has entered into a contractual relationship to perform a specific function for the dealer that permits the third party to access protected dealer data or to write data to a dealer data system, or both, to carry out the specified function.

(2) "Cyber ransom" means to encrypt, restrict, or prohibit or threaten or attempt to encrypt, restrict, or prohibit a dealer's or a dealer's authorized integrator's access to protected dealer data for monetary gain.

(3) "Dealer" has the same meaning as "new motor vehicle dealer" provided in 61-4-201 and includes any authorized dealer personnel acting on behalf of the dealer owner-operator.

(4) "Dealer data system" means any software, hardware, or firmware owned, leased, rented, or controlled by a dealer and used by the dealer in its business operations or licensed by a dealer that includes a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores or provides access to protected dealer data and includes dealership management systems and consumer relations management systems.

(5) "Dealer data vendor" means any dealer management system provider, consumer relationship management system provider, or other vendor providing similar services that permissibly stores protected dealer data pursuant to a contract with a dealer.

(6) "Fees" means charges for allowing access to protected dealer data in excess of any direct costs incurred by the dealer data vendor in providing protected dealer data access to an authorized integrator or allowing an authorized integrator to write data to a dealer data system.

(7) "Prior express written consent" means the dealer's express written consent that is contained in a document separate from any other consent, contract, franchise agreement, or other writing and that contains:

(a) the dealer's consent to the data sharing and identification of all parties with whom the data may be shared;

(b) all details that the dealer requires relating to the scope and nature of the data to be shared, including the data fields and the duration for which the sharing is authorized; and

(c) provisions and restrictions that are required under federal law to allow the sharing.

(8) "Protected dealer data" means any:

(a) personal, financial, or other data relating to a consumer that a consumer provides to a dealer or that a dealer otherwise obtains and that is stored in the dealer's data system;

(b) other data regarding a dealer's business operations that is stored in the dealer's dealer data system; or

(c) motor vehicle diagnostic data that is stored in a dealer data system. This subsection (8)(c) does not give a dealer any ownership rights to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to a consumer.

(9) "Required manufacturer data" means:

(a) data required to be obtained by the manufacturer under federal or state law or to complete or verify a transaction between the dealer and the manufacturer; and

(b) information that is reasonably necessary for any of the following:

(i) a safety, recall, or other legal notice obligation;

(ii) the sale and delivery of a new motor vehicle or a certified used motor vehicle to a consumer;

(iii) the validation and payment of consumer or dealer incentives;

(iv) claims for dealer-supplied services relating to warranty parts or repairs;

(v) the evaluation of dealer performance, including but not limited to the evaluation of the dealer's monthly financial statements and sales or service, consumer satisfaction with the dealer through direct consumer contact, or consumer surveys;

(vi) dealer and market analytics;

(vii) the identification of the dealer that sold or leased a specific motor vehicle and the time of the transaction;

(viii) marketing purposes designed for the benefit of or to direct leads to dealers, not including a consumer's financial information on the consumer's credit application or a dealer's individualized notes about a consumer that are not related to a transaction;

(ix) motor diagnostic data; or

(x) the development, evaluation, or improvement of the manufacturer's products or services.

(10) "STAR standards" means the current, applicable security standards published by the standards for technology in automotive retail.

(11) (a) "Third party" includes service providers, vendors, dealer data vendors, authorized integrators, and any other person other than the dealer.

(b) The term does not include a government entity acting pursuant to federal, state, or local law, a third party acting pursuant to a valid court order, or a manufacturer.

**History: En. Sec. 1, Ch. 283, L. 2019; amd. Sec. 1, Ch. 362, L. 2023.**

**30-11-718. Prohibited actions.** (1) A third party may not do any of the following:

(a) access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the prior express written consent of the dealer;

(b) take any action by contract, technical means, or otherwise to prohibit or limit a dealer's ability to protect, store, copy, share, or use protected dealer data, including all of the following:

(i) imposing any fee or other restriction on the dealer or an authorized integrator for accessing or sharing protected dealer data or for writing data to a dealer data system, including any fee on a dealer that chooses to submit or push data or information to the third party as prescribed in this section. A third party shall disclose a charge to the dealer and justify the charge by documentary evidence of the costs associated with access or the charge is a fee pursuant to this subsection (1)(b)(i).

(ii) prohibiting a third party that has satisfied or is compliant with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards and that the dealer has identified as one of its authorized integrators from integrating into the dealer's dealer data system or placing an unreasonable restriction on integration by an authorized integrator or other third party that the dealer wishes to be an authorized integrator. For the purposes of this subsection (1)(b)(ii), "unreasonable restriction" includes:

(A) an unreasonable limitation or condition on the scope or nature of the data that is shared with an authorized integrator;

(B) an unreasonable limitation on the ability of the authorized integrator to write data to a dealer data system;

(C) an unreasonable limitation or condition on a third party that accesses or shares protected dealer data or that writes data to a dealer data system; and

(D) requiring unreasonable access to a third party's sensitive, competitive, or other confidential business information as a condition for accessing protected dealer data or sharing protected dealer data with an authorized integrator.

(c) prohibit or limit a dealer's ability to store, copy, or securely share or use protected dealer data outside of the dealer data system in any manner and for any reason;

(d) allow access to or access protected dealer data without prior express written consent; or

(e) engage in any act of cyber ransom.

(2) Prior express written consent may:

(a) be unilaterally revoked or amended by the dealer with 30 days' notice without cause and immediately for cause;

(b) not be sought or required as a condition of or factor for consideration or eligibility for any manufacturer program, standard, or policy, including those that offer or relate to a bonus, incentive, rebate, or other payment or benefit to a dealer, except that if the bonus, incentive, rebate, or other payment program requires the delivery of the information that is protected dealer data to qualify for the program and receive the program benefits, a dealer shall supply the information to participate in the program.

(3) This section does not prevent a dealer, manufacturer, or third party from discharging its obligations as a service provider or otherwise under federal, state, or local law to protect and secure protected dealer data or to otherwise limit those responsibilities.

(4) A dealer data vendor or an authorized integrator is not responsible for any action taken directly by the dealer, or for any action the dealer data vendor or authorized integrator takes in appropriately following the written instructions of the dealer, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(5) A dealer is not responsible for any action taken directly by any of its dealer data vendors or authorized integrators, or for any action the dealer takes directly in appropriately following the written instructions of any of its dealer data vendors or authorized integrators, to the extent that the action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data vendor or authorized integrator.

**History: En. Sec. 2, Ch. 283, L. 2019; amd. Sec. 2, Ch. 362, L. 2023.**

**30-11-719. Other responsibilities and restrictions.** (1) All dealer data vendors and authorized integrators:

(a) may access, use, store, or share protected dealer data only to the extent permitted in the contract with the dealer;

(b) shall make any agreement regarding access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable upon no more than 90 days' notice from the dealer;

(c) must, on notice of the dealer's intent to terminate its contract and in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including but not limited to:

(i) providing unrestricted access to, or an electronic copy of, all protected dealer data and all other data stored in the dealer data system in a format that a successor dealer data vendor or authorized integrator can access and use; and

(ii) deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(d) shall provide a dealer, on request, with a listing of all entities with whom it is sharing dealer data or with whom it has allowed access to protected dealer data; and

(e) shall allow a dealer to audit the dealer data vendor's or authorized integrator's access to and use of any protected dealer data.

(2) Unless a dealer gives prior express written consent, a manufacturer may not access, share, sell, copy, use, or transmit or require a dealer to share or provide access to protected dealer data beyond the required manufacturer data and may use any required manufacturer data obtained from a dealer data system for the purposes described in subsection (5).

(3) A manufacturer may not engage in an act of cyber ransom or take an action by contract, technical means, or otherwise to prohibit or limit a dealer's ability to protect, store, copy, share, or use protected dealer data, including actions described in subsection (3)(b)(ii). A manufacturer or a manufacturer's selected third party may not require a dealer to pay a fee for the sharing of required manufacturer data if the manufacturer both:

(a) requires a dealer to provide required manufacturer data through a specific third party that the manufacturer selects; and

(b) does not allow the dealer to submit the data using the dealer's choice of a third-party vendor and both of the following apply:

(i) the data is in a format that is compatible with the file format required by the manufacturer; and

(ii) the third-party vendor satisfies or is in compliance with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards.

(4) A manufacturer shall indemnify a dealer for any third-party claims asserted against or damages incurred by the dealer to the extent caused by access to, use of, or disclosure of protected dealer data in violation of this section by the manufacturer or a third party acting on

behalf of a manufacturer to whom the manufacturer has provided the protected dealer data. A dealer bringing a cause of action against a manufacturer for a violation of this section has the burden of proof.

(5) Except as provided in subsection (2), this section does not restrict or limit a manufacturer's right to obtain required manufacturer data, use required manufacturer data for the purposes prescribed by 30-11-717(9), or use or control data that is proprietary to the manufacturer, or created by the manufacturer, obtained from a source other than the dealer or that is public information.

(6) A manufacturer or a third party may not require a dealer to grant the manufacturer, the third party, or any person acting on behalf of the manufacturer or third party direct or indirect access to the dealer's dealer data system. Instead of providing a manufacturer or third party with access to the dealer's data system, a dealer may submit or push data or information to a manufacturer or third party through any widely acceptable electronic file format or protocol that complies with the STAR standards or other generally accepted standards that are at least as comprehensive as the STAR standards.

**History: En. Sec. 3, Ch. 283, L. 2019; amd. Sec. 3, Ch. 362, L. 2023.**

**30-11-720. Dealer data vendors — authorized integrators — requirements.** (1) A dealer data vendor shall:

(a) adopt and make available a standardized framework for the exchange, integration, and sharing of data from dealer data systems with authorized integrators and the retrieval of data by authorized integrators using the STAR standards or a standard that is compatible with the STAR standards; and

(b) provide access to open application programming interfaces to authorized integrators. If the application programming interfaces are not the reasonable commercial or technical standard for secure data integration, the dealer data vendor may provide a similar open access integration method if that method provides the same or better access to authorized integrators as an application programming interface and uses the required standardized framework.

(2) A dealer data vendor and authorized integrator:

(a) may access, use, store, or share protected dealer data or any other data from a dealer data system only to the extent allowed in the written agreement with the dealer;

(b) shall make any agreement relating to access to, sharing or selling of, copying, using, or transmitting protected dealer data terminable on 90-day notice from the dealer;

(c) on notice of the dealer's intent to terminate the agreement, in order to prevent any risk of consumer harm or inconvenience, shall work to ensure a secure transition of all protected dealer data to a successor dealer data vendor or authorized integrator, including:

(i) providing access to or an electronic copy of all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data vendor or authorized integrator can access and use; and

(ii) deleting or returning to the dealer all protected dealer data before the contract terminates pursuant to the dealer's written directions;

(d) on a dealer's request, shall provide the dealer with a listing of all entities with whom it is sharing protected dealer data or whom it has allowed access to protected dealer data; and

(e) shall allow a dealer to audit the dealer data vendor or authorized integrator's access to and use of any protected dealer data.

**History: En. Sec. 4, Ch. 362, L. 2023.**

## Part 8

## Termination, Cancellation, Nonrenewal, or Substantial Alteration of Farm Implements Dealership Agreements

**Part Cross-References**

Canceled dealership contracts — repurchase requirements — dealer data, Title 30, ch. 11, part 7.

**30-11-801. Definitions.** As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed the retiring dealer in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

**History: En. Sec. 1, Ch. 45, L. 1985; amd. Sec. 1, Ch. 522, L. 1991; amd. Sec. 63, Ch. 483, L. 2001.**

**30-11-802. Cancellation and alteration of dealerships.** No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

**History: En. Sec. 2, Ch. 45, L. 1985.**

**Cross-References**

Extinction of contracts — rescission, Title 28, ch. 2, part 17.

**30-11-803. Notice of termination or change in dealership.** (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

**History: En. Sec. 3, Ch. 45, L. 1985.**

**30-11-804. Transfer.** A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

**History:** En. Sec. 2, Ch. 522, L. 1991.

**30-11-805. Refusal to honor succession to ownership — notice required.** (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-806, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

**History:** En. Sec. 3, Ch. 522, L. 1991.

**30-11-806. Procedure to determine right to succeed.** (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor the family member's or successor's succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-805, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

**History:** En. Sec. 4, Ch. 522, L. 1991; amd. Sec. 942, Ch. 56, L. 2009.

**30-11-807. Written designation of succession unaffected.** Sections 30-11-804 through 30-11-809 do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

**History:** En. Sec. 5, Ch. 522, L. 1991; amd. Sec. 943, Ch. 56, L. 2009.

**30-11-808. Illegal cancellation of dealership based on natural disaster.** A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

**History:** En. Sec. 6, Ch. 522, L. 1991.

**30-11-809. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-804 through 30-11-809 or 30-11-814 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

**History:** En. Sec. 7, Ch. 522, L. 1991; amd. Sec. 3, Ch. 181, L. 2017.

**30-11-810 reserved.**

**30-11-811. Action for damages and injunctive relief.** If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

**History:** **En. Sec. 4, Ch. 45, L. 1985.**

**Cross-References**

Measure of damages, Title 27, ch. 1, part 3.
Specific and preventive relief, Title 27, ch. 1, part 4.
Injunctions, Title 27, ch. 19.
Enforcement of obligations arising by operation of law, 28-1-203.

**30-11-812 and 30-11-813 reserved.**

**30-11-814. Grantor's right of first refusal — farm implements.** (1) In addition to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer conducts any of the dealership's business, one or more grantors shall have the option to exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the grantor's farm implements at the relevant location. The right of first refusal may occur if all the following requirements are met:

(a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer's owner receives the same or greater consideration as the owner has contracted to receive in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of the dealer's assets that are dedicated to the sale and service of the grantor's farm implements at the relevant location;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

(d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon completion of the transaction. The costs include amounts incurred by the grantor and dealer that are relative to the proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the party's costs and attorney fees within 20 days of the receipt of the other party's written request for the accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

(2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall appoint a mutually agreeable certified business appraiser to establish the fair market value. The cost of the appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an appraiser, each shall appoint a certified business appraiser who must make an independent appraisal. The grantor and dealer shall each be responsible for the cost of the appraiser it retains. If the appraisals are within 10% of each other, the average of the two appraisals must constitute the fair market value. If the two appraisals differ by more than 10%, the two appraisers may appoint a third certified business appraiser who shall review the first two appraisals. The third appraisal, when taken with the first two appraisals and averaged among the three, must establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and dealer.

(3) This section does not impose any obligation on the grantor to purchase the dealership and does not affect any contractual right of the grantor, including but not limited to any right to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of farm implements.

(4) If the grantor exercises its right of first refusal under this section, the grantor and dealer shall use best efforts to complete the transaction within 120 calendar days after the fair market value has been determined under subsection (2). If the grantor elects not to exercise its right of first refusal, the proposed transfer or sale remains subject to further review pursuant to 30-11-804 through 30-11-806. During the 60-day period set forth in subsection (1)(a) of this section, the grantor shall assess whether the proposed new owner or transferee meets the requirements of 30-11-804.

**History:** **En. Sec. 1, Ch. 181, L. 2017.**

## Part 9
## Termination, Cancellation, Nonrenewal, Substantial Alteration, or Transfer of Construction Equipment Dealership Agreements

**30-11-901. Definitions.** As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Construction equipment" means any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work.

(3) "Dealer" means a person who is a grantee of a construction equipment dealership situated in this state.

(4) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute construction equipment, in which there is a community of interest in the business of offering, selling, or distributing construction equipment.

(5) "Department" means the department of labor and industry established in 2-15-1701.

(6) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(7) "Designated successor" means a person designated in writing by the retiring dealer to succeed in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(8) (a) "Good cause", when used in 30-11-902, 30-11-903, and 30-11-909, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-904 through 30-11-908, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

**History: En. Sec. 1, Ch. 180, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001.**

**30-11-902. Cancellation and alteration of dealerships.** A grantor may not, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

**History: En. Sec. 2, Ch. 180, L. 2001.**

**30-11-903. Notice of termination or change in dealership.** (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

**History:** **En. Sec. 3, Ch. 180, L. 2001.**

**30-11-904. Transfer.** A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated family member, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

**History:** **En. Sec. 4, Ch. 180, L. 2001.**

**30-11-905. Refusal to honor succession to ownership — notice required.** (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of the grantor's refusal to honor the succession and of the grantor's intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to 30-11-906, the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

**History:** **En. Sec. 5, Ch. 180, L. 2001.**

**30-11-906. Procedure to determine right to succeed.** (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor succession to the ownership and operation of the dealership may, within the 60-day period provided for in 30-11-905, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

**History:** **En. Sec. 6, Ch. 180, L. 2001.**

**30-11-907. Written designation of succession unaffected.** Sections 30-11-904 through 30-11-908 do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

**History:** **En. Sec. 7, Ch. 180, L. 2001.**

**30-11-908. Civil damages.** A dealer suffering pecuniary loss due to a violation of 30-11-904 through 30-11-908 or 30-11-914 who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

**History:** **En. Sec. 8, Ch. 180, L. 2001; amd. Sec. 4, Ch. 181, L. 2017.**

**30-11-909. Action for damages and injunctive relief.** If any grantor violates this part, a dealer may bring an action against the grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

**History:** En. Sec. 9, Ch. 180, L. 2001.

**30-11-910 through 30-11-913 reserved.**

**30-11-914. Grantor's right of first refusal — construction equipment.** (1) In addition to the terms of a dealership contract, in the event of a proposed sale or transfer of a dealership or of a location at which the dealer conducts any of the dealership's business, one or more grantors shall have the option to exercise a right of first refusal to acquire the dealer's assets that are dedicated to the sale and service of the grantor's construction equipment at the relevant location. The right of first refusal may occur if all the following requirements are met:

(a) the grantor notifies the dealer in writing of the grantor's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer's owner receives the same or greater consideration as the owner has contracted to receive in a sale, not exceeding fair market value, in connection with the proposed change of ownership or transfer of the dealer's assets that are dedicated to the sale and service of the grantor's construction equipment at the relevant location;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, corporation, or other entity controlled by a member or members of the family of one or more dealer owners; and

(d) the grantor and dealer agree to each pay 50% of the total reasonable costs and attorney fees upon completion of the transaction. The costs include amounts incurred by the grantor and dealer relative to the proposed changes in ownership or transfer of dealership assets. Each party shall submit an accounting of the party's costs and attorney fees within 20 days of receipt of the other party's written request for the accounting. The grantor may request the accounting before exercising the grantor's right of first refusal.

(2) If the grantor and the dealer cannot agree on the fair market value in subsection (1)(b), they shall appoint a mutually agreeable certified business appraiser to establish the fair market value and the cost of the appraiser must be shared equally by the grantor and dealer. If the grantor and the dealer cannot agree on an appraiser, each shall appoint a certified business appraiser who shall make an independent appraisal. The grantor and dealer shall each be responsible for the appraiser it retains. If the appraisals are within 10% of each other, the average of the two appraisals must constitute the fair market value. If the two appraisals differ by more than 10%, the two appraisers may appoint a third certified business appraiser who shall review the two appraisals. The third appraisal, when taken with the first two appraisals and averaged among the three, must establish the fair market value. The cost of the third appraiser must be shared equally by the grantor and dealer.

(3) This section does not impose any obligation on the grantor to purchase the dealership and does not affect any contractual right of the grantor, including but not limited to any right to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of construction equipment.

(4) If the grantor exercises its right of first refusal under this section, the grantor and dealer shall use best efforts to complete the transaction within 120 calendar days after the fair market value has been determined under subsection (2). If the grantor elects not to exercise its right of first refusal, the proposed transfer or sale remains subject to further review pursuant to 30-11-904 through 30-11-906. During the 60-day period set forth in subsection (1)(a) of this section, the grantor shall assess whether the proposed new owner or transferee meets the requirements of 30-11-904.

**History:** En. Sec. 2, Ch. 181, L. 2017.

# CHAPTER 12

# WEIGHTS, MEASURES, STANDARDS, AND LABELING

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## Part 1
## General Provisions

**30-12-101. Definitions.** Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

(2) "Commerce", "trade", or "commercial" means a monetary or value exchange between parties for merchandise or services.

(3) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in a consumer package form or nonconsumer package form, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "On-farm scale" means a scale that is permanent or mobile, located on a farm or ranch, and used primarily by the owner or operator of the farm or ranch. An on-farm scale may be a livestock scale used for the weighing of live animals, a vehicle scale used for weighing grain, hay, or other field crops, or a combination livestock and vehicle scale.

(10) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(11) "Sell" and "sale" include but are not limited to barter and exchange.

(12) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(13) "Weight", when used in connection with any commodity, means net weight.

(14) (a) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. The provisions of parts 1 through 5 do not apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

(b) The terms do not include time measuring devices by which products or services are sold.

**History: En. Sec. 1, Ch. 99, L. 1969; amd. Sec. 146, Ch. 431, L. 1975; R.C.M. 1947, 90-153; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 442, L. 1989; amd. Sec. 64, Ch. 483, L. 2001; amd. Sec. 1, Ch. 34, L. 2005.**

**Cross-References**

Fractional parts of unit and value — construction of contracts, 30-12-106.

**30-12-102. Systems of weights and measures.** The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems may be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

**History: En. Sec. 2, Ch. 99, L. 1969; R.C.M. 1947, 90-154; amd. Sec. 2, Ch. 442, L. 1989.**

**Cross-References**

Fractional parts of unit and value — construction of contracts, 30-12-106.

**30-12-103. State standards of weight and measure.** Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards are, when they have been certified as being satisfactory for use as such by the national institute of standards and technology, the state standards of weight and measure. The state standards must be kept in a safe and suitable place in the office or laboratory of the department. They may not be removed from there except for repairs or for certification.

**History: En. Sec. 4, Ch. 99, L. 1969; amd. Sec. 147, Ch. 431, L. 1975; R.C.M. 1947, 90-156; amd. Sec. 3, Ch. 442, L. 1989.**

**Cross-References**

General powers and duties of Department, 30-12-201.

**30-12-104. Field standards and equipment.** In addition to the state standards provided for in 30-12-103, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of parts 1 through 5 of this chapter. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

**History: En. Sec. 5, Ch. 99, L. 1969; R.C.M. 1947, 90-157.**

**30-12-105. Use of metric sizes in sale of commodities — department to make rules.** Metric sizes as defined by the department of labor and industry by rule will be permitted if there is compliance with all labeling requirements of the state.

**History: En. Sec. 1, Ch. 75, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 133, Ch. 575, L. 1981; amd. Sec. 65, Ch. 483, L. 2001.**

**30-12-106. Fractional parts — construction of contracts.** Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in 30-12-101 and 30-12-102, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

**History: En. Sec. 33, Ch. 99, L. 1969; R.C.M. 1947, 90-185; MCA 1979, 30-12-501; redes. 30-12-106 by Code Commissioner, 1981.**

**Cross-References**

Sale by net weight, 30-12-306.

**30-12-107. Split weighing of commodities allowed — disclosure — rules.** (1) The net weight of a commodity, including raw logs, grain, and quarried rock, transported by any combination of truck, truck tractor, trailer, or semitrailer, as those terms are defined in 61-1-101, may be determined by split weighing the combination if:

(a) the vendor and the purchaser agree in writing to the split weighing; and

(b) either the vendor or the purchaser who is a party to the agreement is responsible for paying the cost of the shipment and any freight charges.

(2) The weigh ticket, weight slip, or other documentation certifying the net weight of the commodity and accompanying delivery of the commodity must clearly disclose that the net weight of the commodity as delivered was determined by split weighing.

(3) The written agreement between the vendor and the purchaser to allow for split weighing must accompany delivery of the commodity.

(4) The department shall adopt rules consistent with this section to provide for the implementation and administration of split weighing. The rules must require, at a minimum that:

(a) the name of the person operating a scale to split weigh and the date and location of the scale be reported to the department and be stated on the weigh ticket, weight slip, or other documentation; and

(b) the person operating the scale shall certify that:

(i) each axle of the vehicle or combination of vehicles rests on a straight surface that is level with the deck of the vehicle scale or, if not level, the amount by which the deck of the scale is not level does not exceed 1/3 inch per foot of distance between the deck of the vehicle scale and the axle;

(ii) the brakes of the vehicle or combination of vehicles are not used while the vehicle is being weighed; and

(iii) the transmission of the vehicle or combination of vehicles is in neutral.

**History: En. Sec. 1, Ch. 296, L. 2013.**

## Part 2
## Authority of Department of Labor and Industry

**Part Cross-References**

Offenses and penalties, 30-12-504.

**30-12-201. General powers and duties of department.** The department has the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures used in commerce or trade that are offered for sale, sold, or in use in this state.

**History: En. Sec. 7, Ch. 99, L. 1969; amd. Sec. 148, Ch. 431, L. 1975; R.C.M. 1947, 90-159; amd. Sec. 4, Ch. 442, L. 1989.**

**Cross-References**

State standards of weight and measure, 30-12-103.

**30-12-202. Specific powers and duties of department — rules.** (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, and the rules have the effect of law. These rules may include:

(a) schedules of fees for licensing, testing, and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of service providers and service agencies.

(2) The rules described in subsection (1) must include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments to the specifications, as recommended by the national institute of standards and technology and published in national institute of standards and technology Handbook 44 and supplements to that handbook or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus is considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus are considered to be "incorrect".

**History:** **En. Sec. 8, Ch. 99, L. 1969; amd. Sec. 149, Ch. 431, L. 1975; R.C.M. 1947, 90-160; amd. Sec. 5, Ch. 442, L. 1989; amd. Sec. 944, Ch. 56, L. 2009; amd. Sec. 1, Ch. 228, L. 2023.**

**Cross-References**

Method of sale of commodities — general, 30-12-301.

Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

**30-12-203. Licensing of weighing devices.** (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by applying to the department on a form provided by the department. Each license must require at least one inspection a year.

(3) (a) An application must be accompanied by the proper fee, as established by this section and subject to subsection (3)(b), except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

| Capacity | Fees |
|---|---|
| 499 pounds or less | $20 |
| 500 pounds through 1,999 pounds | $33 |
| 2,000 pounds through 7,999 pounds | $64 |
| 8,000 pounds through 60,000 pounds | $165 |
| 60,001 pounds or more | $280 |

(b) The department may increase fees in subsection (3)(a) every 2 years by rule, provided the fees are commensurate with the cost of issuing a license and the fee increase does not exceed 15%.

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses are annual and, except for those described in subsection (5)(b), expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) Licenses for on-farm scales expire at the end of the calendar year.

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) for on-farm scales, before the first day of the sixth month of the year in which the license fee is due; or

(ii) for all other licenses, within 60 days of the anniversary date.

(b) If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.

(c) A person may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.

(8) The department shall report biennially to the economic affairs interim committee in accordance with 5-11-210 concerning license fees and cost increases under this section.

**History:** **En. 90-160.1 by Sec. 1, Ch. 244, L. 1973; R.C.M. 1947, 90-160.1; amd. Sec. 1, Ch. 591, L. 1983; amd. Sec. 1, Ch. 615, L. 1993; amd. Sec. 4, Ch. 366, L. 1997; amd. Sec. 2, Ch. 34, L. 2005; amd. Sec. 1, Ch. 196, L. 2007; amd. Sec. 1, Ch. 356, L. 2013; amd. Sec. 2, Ch. 228, L. 2023.**

**Cross-References**

Licensing — discrimination, 49-3-204.

**30-12-204. Testing at state-supported institutions.** The department shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings in writing to the executive officer of the institution concerned.

**History:** **En. Sec. 9, Ch. 99, L. 1969; amd. Sec. 150, Ch. 431, L. 1975; R.C.M. 1947, 90-161.**

**30-12-205. General testing.** (1) When not otherwise provided by law, the department may inspect and test all weights and measures kept, offered, or exposed for sale to determine if they are correct.

(2) The department, within a 12-month period or less frequently if in accordance with a schedule issued by it, and as often as it considers necessary, shall inspect and test, to ascertain if they are correct, all weights and measures commercially used:

(a) in determining the weight, measurement, or count of commodities or things sold or offered or exposed for sale on the basis of weight, measure, or count; or

(b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count.

(3) With respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of the devices. The lots of which the samples are representative must be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples.

(4) An itinerant peddler or hawker using weights and measures shall register the peddler's or hawker's name and address with the department so that the peddler's or hawker's equipment can be tested in accordance with the provisions of this law.

**History: En. Sec. 10, Ch. 99, L. 1969; amd. Sec. 151, Ch. 431, L. 1975; R.C.M. 1947, 90-162; amd. Sec. 945, Ch. 56, L. 2009.**

**30-12-206. Investigations.** The department shall investigate complaints made to it concerning violations of parts 1 through 5. It shall, upon its own initiative, conduct those investigations it considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of parts 1 through 5 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

**History: En. Sec. 11, Ch. 99, L. 1969; amd. Sec. 152, Ch. 431, L. 1975; R.C.M. 1947, 90-163.**

**30-12-207. Inspection of packages.** (1) The department shall adopt by rule and implement a schedule to weigh or measure and inspect packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, exposed for sale, or sold in accordance with law. The schedule adopted must provide for random inspection of packages and commodities at randomly selected inspection sites. When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department.

**History: En. Sec. 12, Ch. 99, L. 1969; amd. Sec. 153, Ch. 431, L. 1975; R.C.M. 1947, 90-164; amd. Sec. 6, Ch. 442, L. 1989.**

**Cross-References**

Offenses and penalties, 30-12-504.

**30-12-208. Stop-use, stop-removal, and removal orders.** The department may issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being or susceptible of being commercially used and issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery whenever in the course of enforcement of parts 1 through 5 it considers it necessary or expedient to issue those orders. A person may not use, remove from the premises specified, or fail to remove from the premises specified any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section.

**History:** **En. Sec. 13, Ch. 99, L. 1969; amd. Sec. 154, Ch. 431, L. 1975; R.C.M. 1947, 90-165.**

**30-12-209. Disposition of correct and incorrect apparatus.** (1) The department shall approve for use and seal or mark with appropriate devices those weights and measures which it finds upon inspection and test to be "correct" as defined in 30-12-202 and shall reject and mark or tag as "rejected" those weights and measures which it finds, upon inspection or test, to be "incorrect" as defined in 30-12-202 but which in its best judgment are susceptible of satisfactory repair.

(2) The department shall condemn, and may seize and destroy, weights and measures found to be incorrect which, in its best judgment, are not susceptible of satisfactory repair.

(3) Weights and measures that have been rejected may be confiscated and may be destroyed by the department if not corrected as required by 30-12-211 or if used or disposed of contrary to the requirements of 30-12-211.

(4) Sealing or marking are not required with respect to those weights and measures which may be exempted therefrom by a rule of the department issued under 30-12-202.

**History:** **En. Sec. 14, Ch. 99, L. 1969; amd. Sec. 155, Ch. 431, L. 1975; R.C.M. 1947, 90-166.**

**Cross-References**

Offenses and penalties, 30-12-504.

**30-12-210. Police powers.** In enforcing the provisions of parts 1 through 5 or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.

**History:** **En. Sec. 15, Ch. 99, L. 1969; amd. Sec. 156, Ch. 431, L. 1975; R.C.M. 1947, 90-167.**

**Cross-References**

Offenses and penalties, Title 30, ch. 12, part 5.

**30-12-211. Duty of owners of incorrect apparatus.** (1) Weights and measures that have been rejected under the authority of the department remain subject to the control of the department until suitable repair or disposition of them has been made as required by this section.

(2) The owner of rejected weights and measures shall correct them within 30 days or a longer period that may be authorized by the department.

(3) Instead of correction, the owner may dispose of the weights and measures, but only in a manner specifically authorized by the department.

(4) Weights and measures that have been rejected may not again be used commercially until they have been officially reexamined and found to be correct, until specific written permission for that use is issued by the department, or until the rejection tag has been removed and the rejected device has been repaired and placed in service by a person properly registered to perform those acts under a rule issued by the department for the registration of weights and measures service providers and service agencies.

**History:** **En. Sec. 17, Ch. 99, L. 1969; amd. Sec. 157, Ch. 431, L. 1975; R.C.M. 1947, 90-169; amd. Sec. 946, Ch. 56, L. 2009.**

**Cross-References**

Offenses and penalties, Title 30, ch. 12, part 5.

**30-12-212. Noncommercial inspections — fees.** Subject to the availability of resources and upon payment of a fee commensurate with the costs of inspection, the department may inspect noncommercial weighing and measuring devices. Fees collected under this section must be deposited in the state general fund.

**History:** **En. Sec. 7, Ch. 442, L. 1989.**

## Part 3
## Method of Sale of Commodities

**30-12-301. Method of sale of commodities — general.** (1) Commodities in liquid form may be sold only by liquid measure or by weight, and, except as otherwise provided in parts 1 through 5, commodities not in liquid form may be sold only by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if those methods give accurate information as to the quantity of commodity sold. This section does not apply to:

(a) commodities when sold for immediate consumption on the premises where sold;

(b) vegetables when sold by the head or bunch;

(c) commodities in containers standardized by a law of this state or by federal law;

(d) commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure;

(f) unprocessed vegetable and animal fertilizer when sold by cubic measure;

(g) cottage food products as defined in 50-50-102;

(h) homemade food or homemade food products sold pursuant to Title 50, chapter 49, part 2; or

(i) aquaculture products as defined in 80-3-302.

(2) The department may adopt reasonable rules necessary to ensure that amounts of commodity sold are determined in accordance with good commercial practice and are determined and represented as to be accurate and informative to all parties at interest.

**History: En. Sec. 18, Ch. 99, L. 1969; amd. Sec. 158, Ch. 431, L. 1975; R.C.M. 1947, 90-170; amd. Sec. 5, Ch. 239, L. 2015; amd. Sec. 4, Ch. 320, L. 2021; amd. Sec. 1, Ch. 344, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 344, L. 2025. Amendment effective May 1, 2025.

**Cross-References**

Local government — authority to weigh, measure, and regulate certain commodities, 7-21-4203.

Specific powers and duties of Department — rules, 30-12-202.

**30-12-302. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions.** (1) Except as otherwise provided in parts 1 through 5, a commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package definite, plain, and conspicuous declarations of:

(a) the identity of the commodity in the package unless it can easily be identified through the wrapper or container;

(b) the net quantity of the contents in terms of weight, measure, or count; and

(c) in the case of any package kept, offered, or exposed for sale or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rules adopted by the department.

(2) In connection with the declaration required under subsection (1)(b), neither the qualifying term "when packed" nor words of similar import nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in a package may be used.

(3) Under subsection (1)(b), the department shall by rule establish:

(a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure;

(b) exemptions as to small packages; and

(c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits sold in conformance with part 4.

**History: En. Sec. 19, Ch. 99, L. 1969; amd. Sec. 159, Ch. 431, L. 1975; R.C.M. 1947, 90-171.**

**Cross-References**

Specific powers and duties of Department — rules, 30-12-202.

**30-12-303. Declarations of unit price on random packages.** In addition to the declarations required by 30-12-302, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

**History: En. Sec. 20, Ch. 99, L. 1969; R.C.M. 1947, 90-172.**

**30-12-304. Misleading packages.** A commodity in package form may not be wrapped or in a container made, formed, or filled so as to mislead the purchaser as to the quantity of the contents of the package. The contents of a container may not fall below a reasonable standard of fill which may be prescribed for that commodity by the department.

**History: En. Sec. 21, Ch. 99, L. 1969; amd. Sec. 160, Ch. 431, L. 1975; R.C.M. 1947, 90-173.**

**Cross-References**

Offenses and penalties, 30-12-504.

**30-12-305. Advertising packages for sale.** Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as required by law or regulation to appear on the package, provided:

(1) that where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement; and

(2) that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed", "minimum", "not less than", or any other terms of similar import or any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", and the like) that tends to exaggerate the amount of commodity in the package.

**History: En. Sec. 22, Ch. 99, L. 1969; R.C.M. 1947, 90-174.**

**30-12-306. Sale by net weight.** (1) If a commodity is sold on the basis of weight, the net weight of the commodity must be employed and all contracts concerning commodities must be construed on the basis of net weight.

(2) The net weight of a commodity being transported by any combination of truck, truck tractor, trailer, or semitrailer, as those terms are defined in 61-1-101, may be determined by split weighing the combination pursuant to 30-12-107. All disclosure, reporting, or listing of the net weight of a commodity determined by split weighing must state that the net weight was determined by split weighing.

**History: En. Sec. 23, Ch. 99, L. 1969; amd. Sec. 161, Ch. 431, L. 1975; R.C.M. 1947, 90-175; amd. Sec. 2, Ch. 296, L. 2013.**

**Cross-References**

Fractional parts of unit and value — construction of contracts, 30-12-106.

**30-12-307. Misrepresentation of price.** Whenever any commodity or service is sold or is offered, exposed, or advertised for sale by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents.

**History: En. Sec. 24, Ch. 99, L. 1969; R.C.M. 1947, 90-176.**

**Cross-References**

Offenses and penalties, 30-12-504.

## Part 4
## Sale of Specific Commodities

**30-12-401. Meat, poultry, and seafood.** Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood, except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight and the quantity representation may be the total weight of the product or combination and a quantity representation need not be made for each of the several elements of the product or combination.

**History:** **En. Sec. 25, Ch. 99, L. 1969; R.C.M. 1947, 90-177.**

**Cross-References**

Method of sale of commodities — general, 30-12-301.

**30-12-402. Repealed.** Sec. 1, Ch. 15, L. 1999.

**History:** **En. Sec. 26, Ch. 99, L. 1969; amd. Sec. 162, Ch. 431, L. 1975; R.C.M. 1947, 90-178.**

**30-12-403. Repealed.** Sec. 1, Ch. 15, L. 1999.

**History:** **En. Sec. 27, Ch. 99, L. 1969; R.C.M. 1947, 90-179.**

**30-12-404. Repealed.** Sec. 1, Ch. 15, L. 1999.

**History:** **En. Sec. 28, Ch. 99, L. 1969; amd. Sec. 1, Ch. 76, L. 1977; R.C.M. 1947, 90-180.**

**30-12-405. Repealed.** Sec. 1, Ch. 15, L. 1999.

**History:** **En. Sec. 29, Ch. 99, L. 1969; R.C.M. 1947, 90-181.**

**30-12-406. Bulk deliveries sold in terms of weight and delivered by vehicle.** (1) When a vehicle delivers to an individual purchaser a commodity in bulk and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment and in clarity equal to type or printing:

(a) the name and address of the vendor;
(b) the name and address of the purchaser;
(c) the net weight of the delivery expressed in pounds; and
(d) if the net weight was determined by split weighing pursuant to 30-12-107 or 30-12-306.

(2) If the net weight is derived from determinations of gross and tare weights, the gross and tare weights must also be stated in terms of pounds. One of the delivery tickets must be retained by the vendor, and the other must be delivered to the purchaser at the time of delivery of the commodity or must be surrendered on demand to the department. If the department desires to retain it as evidence, the department shall issue a weight slip in place of the ticket for delivery to the purchaser. If the purchaser carries away the purchase, the vendor is only required to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to the purchaser.

**History:** **En. Sec. 30, Ch. 99, L. 1969; amd. Sec. 163, Ch. 431, L. 1975; R.C.M. 1947, 90-182; amd. Sec. 947, Ch. 56, L. 2009; amd. Sec. 3, Ch. 296, L. 2013.**

**Cross-References**

Method of sale of commodities — general, 30-12-301.
Sale by net weight, 30-12-306.

**30-12-407. Furnace and stove oil.** All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of 30-12-301. In the case of each delivery of such liquid fuel not in package form and in an amount greater than 10 gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and in clarity equal to type or printing, there shall be clearly stated:

(1) the name and address of the vendor;

(2) the name and address of the purchaser;

(3) the identity of the type of fuel comprising the delivery;

(4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered;

(5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

**History: En. Sec. 31, Ch. 99, L. 1969; R.C.M. 1947, 90-183.**

**Cross-References**

Approved measure required for part delivery, 82-15-108.
Full compartment sales — approval of meter, 82-15-109.
Unlawful acts, 82-15-110.

**30-12-408. Berries and small fruits.** Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, or 1 dry quart.

**History: En. Sec. 32, Ch. 99, L. 1969; amd. Sec. 164, Ch. 431, L. 1975; R.C.M. 1947, 90-184.**

**Cross-References**

Method of sale of commodities — general, 30-12-301.
Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions, 30-12-302.

**30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful — exception.** (1) Except as provided in subsection (2) or in Title 82, chapter 15, part 1, the sale, barter, or exchange of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(2) Suppliers of gasoline and distillates shall offer Montana petroleum wholesale distributors the option to buy gasoline and distillates either by gross volume actually delivered or on the assumption that the temperature of the product is 60 degrees Fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and may be applied only to single deliveries of 7,500 gallons or more or the metric equivalent. Any adjustments to volume during the temperature compensation process must be made in accordance with standards set under 82-15-103, 82-15-108, and 82-15-109. Purchasers who choose to exercise the option available under this subsection must be provided with invoice listings of both net and gross gallons.

(3) This section does not apply to the exchange or transfer of gasoline and distillates between refiners or transporters of petroleum or petroleum products.

**History: En. 13-812 by Sec. 1, Ch. 198, L. 1975; amd. Sec. 1, Ch. 274, L. 1977; R.C.M. 1947, 13-812; amd. Sec. 1, Ch. 166, L. 1983.**

**Cross-References**

Approved measure required for part delivery, 82-15-108.
Full compartment sales — approval of meter, 82-15-109.
Unlawful acts, 82-15-110.

## Part 5
## Offenses and Penalties

**30-12-501. Renumbered 30-12-106.** Code Commissioner, 1981.

**30-12-502. Hindering or obstructing officer — penalties.** A person who hinders or obstructs the department in any way in the performance of its official duties is guilty of a misdemeanor and upon conviction shall be fined not less than $20 or more than $200 or imprisoned not more than 3 months or both fined and imprisoned.

**History: En. Sec. 34, Ch. 99, L. 1969; amd. Sec. 165, Ch. 431, L. 1975; R.C.M. 1947, 90-186.**

**Cross-References**

General powers and duties of Department, 30-12-201.
Police powers, 30-12-210.

**30-12-503. Impersonation of officer — penalties.** A person who in any way impersonates a person charged with enforcement of parts 1 through 5 by the department, by the use of its seal or a counterfeit of its seal or in any other manner, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

**History: En. Sec. 35, Ch. 99, L. 1969; amd. Sec. 166, Ch. 431, L. 1975; R.C.M. 1947, 90-187.**

**Cross-References**

General powers and duties of Department, 30-12-201.
Police powers, 30-12-210.
Impersonating public servant, 45-7-209.

**30-12-504. Offenses and penalties.** (1) A person may not:

(a) use or possess for the purpose of using for a commercial purpose specified in 30-12-205, sell, offer or expose for sale or hire, or possess for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) use or possess for the purpose of current use for a commercial purpose specified in 30-12-205 a weight or measure that does not bear a seal or mark specified in 30-12-209 unless that weight or measure has been exempted from testing by 30-12-205 or by a rule of the department issued under 30-12-202 or unless the device has been placed in service as provided by a rule of the department issued under 30-12-202. A person using weighing or measuring devices subject to parts 1 through 5 shall report to the department, in writing, the number and location of the weighing or measuring device and shall promptly report the installation of any new weighing or measuring device.

(c) dispose of a rejected or condemned weight or measure in a manner contrary to law or rule;

(d) remove from a weight or measure, contrary to law or rule, any tag, seal, or mark placed on it by the appropriate authority;

(e) sell or offer or expose for sale less than the quantity the person represents of a commodity, thing, or service;

(f) take more than the quantity the person represents of a commodity, thing, or service when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(g) keep for the purpose of sale, advertise or offer or expose for sale, or sell a commodity, thing, or service in a condition or manner contrary to law or rule;

(h) use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position that may reasonably be assumed by a customer;

(i) violate a provision of parts 1 through 5 or of the rules adopted under parts 1 through 5 for which a specific penalty is not prescribed.

(2) A person who violates or who knowingly allows an employee or agent to violate this section is guilty of a misdemeanor and upon a first conviction shall be fined not less than $20 or more than $200 or imprisoned for not more than 3 months or both fined and imprisoned. Upon a second or subsequent conviction, the person shall be fined not less than $50 or more than $500 or imprisoned for not more than 1 year or both fined and imprisoned.

**History: En. Sec. 36, Ch. 99, L. 1969; amd. Sec. 167, Ch. 431, L. 1975; R.C.M. 1947, 90-188; amd. Sec. 948, Ch. 56, L. 2009.**

**Cross-References**

Inspection of packages, 30-12-207.
Police powers, 30-12-210.
Duty of owners of incorrect apparatus, 30-12-211.
Dispensing of drugs, Title 37, ch. 2, part 1.

**30-12-505. Injunction.** The department may apply to any court of competent jurisdiction for, and that court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining a person from violating any provision of parts 1 through 5 of this chapter.

**History: En. Sec. 37, Ch. 99, L. 1969; amd. Sec. 168, Ch. 431, L. 1975; R.C.M. 1947, 90-189.**

**Cross-References**

Injunctions generally, Title 27, ch. 19.
Police powers, 30-12-210.

**30-12-506. Presumptive evidence.** For the purposes of parts 1 through 5, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on is, in the absence of credible evidence to the contrary, presumptive proof of the regular use of that weight or measure or weighing or measuring device for commercial purposes and of the use by the person in charge of the building, enclosure, stand, or vehicle.

**History: En. Sec. 38, Ch. 99, L. 1969; amd. Sec. 169, Ch. 431, L. 1975; R.C.M. 1947, 90-190.**

**Cross-References**

Police powers, 30-12-210.

**30-12-507. Validity of prosecutions.** Prosecutions for violation of any provision of parts 1 through 5 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by parts 1 through 5.

**History: En. Sec. 39, Ch. 99, L. 1969; R.C.M. 1947, 90-191.**

**Cross-References**

Police powers, 30-12-210.

## Part 6
## Money of Account

**30-12-601. Money of account.** The money of account in this state is the dollar, cent, and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

**History: En. Sec. 3150, Pol. C. 1895; re-en. Sec. 2033, Rev. C. 1907; re-en. Sec. 4283, R.C.M. 1921; Cal. Pol. C. Sec. 3272; re-en. Sec. 4283, R.C.M. 1935; R.C.M. 1947, 90-501.**

**Cross-References**

Judgment — how amount expressed, 25-9-203.
Form and contents of writ, 25-13-301.
Money, 30-3-107.

**30-12-602. Limitation.** The provisions of 30-12-601 do not vitiate or affect any account, charge, or entry originally made or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

**History: En. Sec. 3151, Pol. C. 1895; re-en. Sec. 2034, Rev. C. 1907; re-en. Sec. 4284, R.C.M. 1921; Cal. Pol. C. Sec. 3273; re-en. Sec. 4284, R.C.M. 1935; R.C.M. 1947, 90-502.**

## Part 7
## Country of Origin of Meat

**30-12-701. Void.** Sec. 8, Ch. 279, L. 2005.

**History: En. Sec. 1, Ch. 279, L. 2005.**

**30-12-702. Definitions.** As used in this part, the following definitions apply:

(1) "Label" has the meaning provided in 50-31-103.
(2) "Package" has the meaning provided in 50-31-103.

**History: En. Sec. 2, Ch. 279, L. 2005.**

**30-12-703. Labeling permitted.** All producers, growers, and shippers of beef, pork, poultry, or lamb in this state are permitted to label each individual portion, piece, or package of beef, pork, poultry, or lamb in a conspicuous place as legibly, indelibly, and permanently as the nature of the commodity will permit, in a manner that indicates to an ultimate purchaser that the product was produced in Montana.

**History: En. Sec. 3(1), Ch. 279, L. 2005.**

**30-12-704. Void.** Sec. 8, Ch. 279, L. 2005.

**History: En. Sec. 3(2) thru (5), Ch. 279, L. 2005.**

**30-12-705. Void.** Sec. 8, Ch. 279, L. 2005.

**History: En. Sec. 4, Ch. 279, L. 2005.**

**30-12-706. Void.** Sec. 8, Ch. 279, L. 2005.

**History: En. Sec. 5, Ch. 279, L. 2005.**

## Parts 8 and 9 reserved

## Part 10
## Paints — Labeling
## (Repealed)

**30-12-1001. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 1, Ch. 69, L. 1959; Sec. 3-1510, R.C.M. 1947; amd. and redes. 90-701 by Sec. 80, Ch. 218, L. 1974; R.C.M. 1947, 90-701; amd. Sec. 2, Ch. 274, L. 1981.**

**30-12-1002. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 4, Ch. 69, L. 1959; Sec. 3-1513, R.C.M. 1947; amd. and redes. 90-702 by Sec. 83, Ch. 218, L. 1974; R.C.M. 1947, 90-702; amd. Sec. 6, Ch. 137, L. 1979; amd. Sec. 2, Ch. 274, L. 1981.**

**30-12-1003. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 5, Ch. 69, L. 1959; Sec. 3-1514, R.C.M. 1947; amd. and redes. 90-703 by Sec. 84, Ch. 218, L. 1974; R.C.M. 1947, 90-703; amd. Sec. 2, Ch. 274, L. 1981.**

**30-12-1004. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 6, Ch. 69, L. 1959; Sec. 3-1515, R.C.M. 1947; amd. and redes. 90-704 by Sec. 85, Ch. 218, L. 1974; R.C.M. 1947, 90-704.**

**30-12-1005. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 3, Ch. 69, L. 1959; Sec. 3-1512, R.C.M. 1947; amd. and redes. 90-705 by Sec. 82, Ch. 218, L. 1974; R.C.M. 1947, 90-705.**

**30-12-1006. Repealed.** Sec. 1, Ch. 24, L. 1997.
**History: En. Sec. 2, Ch. 69, L. 1959; Sec. 3-1511, R.C.M. 1947; amd. and redes. 90-706 by Sec. 81, Ch. 218, L. 1974; R.C.M. 1947, 90-706.**

# CHAPTER 12A
# UNIFORM COMMERCIAL CODE
# EMERGING TECHNOLOGIES

**Part 1 — Controllable Electronic Records**

30-12A-101. Title.
30-12A-102. Definitions.
30-12A-103. Relation to Title 30, chapter 9A, and consumer laws.
30-12A-104. Rights in controllable account, controllable electronic record, and controllable payment intangible.
30-12A-105. Control of controllable electronic record.
30-12A-106. Discharge of account debtor on controllable account or controllable payment intangible.
30-12A-107. Governing law.

**Part 2 — 2025 Transitional Provisions**

30-12A-201. Title.
30-12A-202. Definitions.
30-12A-203. Savings clause.
30-12A-204. Savings clause.
30-12A-205. Security interest perfected before effective date.
30-12A-206. Security interest unperfected before effective date.
30-12A-207. Effectiveness of actions taken before effective date.
30-12A-208. Priority.
30-12A-209. Priority of claims when priority rules of Title 30, chapter 9A, do not apply.

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**Chapter Compiler's Comments**
*Effective Date:* This chapter is effective October 1, 2025.

## Part 1
## Controllable Electronic Records

**30-12A-101. Title.** This part may be cited as the "Uniform Commercial Code—Controllable Electronic Records".
**History: En. Sec. 94, Ch. 200, L. 2025.**

**30-12A-102. Definitions.** (1) As used in this part, the following definitions apply:

(a) (i) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under 30-12A-105.

(ii) The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, investment property, a transferable record, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government.

(b) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

(c) "Transferable record" has the meaning provided for that term in:

(i) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1); or

(ii) 30-18-115(1).

(d) "Value" has the meaning provided in 30-3-303(1), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.

(2) The definitions in Title 30, chapter 9A, of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", and "investment property" apply to this part.

(3) Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this part.

**History: En. Sec. 95, Ch. 200, L. 2025.**

**30-12A-103. Relation to Title 30, chapter 9A, and consumer laws.** (1) If there is conflict between Title 30, chapter 9A, and this part, Title 30, chapter 9A, governs.

(2) A transaction subject to this part is subject to any applicable rule of law that establishes a different rule for consumers, Title 30, chapter 14, part 1, Title 31, chapter 1, and Title 32, chapter 6, part 1.

**History: En. Sec. 96, Ch. 200, L. 2025.**

**30-12A-104. Rights in controllable account, controllable electronic record, and controllable payment intangible.** (1) This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (3), (4), (5), (7), and (8) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(2) To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(3) Except as provided in this section, law other than this part determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(4) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(5) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(6) Except as provided in subsections (1) and (5) for a controllable account and a controllable payment intangible or law other than this part, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(7) An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(8) Filing of a financing statement under Title 30, chapter 9A, is not notice of a claim of a property right in a controllable electronic record.

**History:** **En. Sec. 97, Ch. 200, L. 2025.**

**30-12A-105. Control of controllable electronic record.** (1) A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(a) gives the person:

(i) power to avail itself of substantially all the benefit from the electronic record; and

(ii) exclusive power, subject to subsection (2), to:

(A) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(B) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(b) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in subjection (1)(a).

(2) Subject to subsection (3), a power is exclusive under subsection (1)(a)(ii)(A) and (1)(a)(ii)(B) even if:

(a) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(b) the power is shared with another person.

(3) A power of a person is not shared with another person under subsection (2)(b) and the person's power is not exclusive if:

(a) the person can exercise the power only if the power also is exercised by the other person; and

(b) the other person:

(i) can exercise the power without exercise of the power by the person; or

(ii) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(4) If a person has the powers specified in subsections (1)(a)(ii)(A) and (1)(a)(ii)(B), the powers are presumed to be exclusive.

(5) A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

(a) has control of the electronic record and acknowledges that it has control on behalf of the person; or

(b) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(6) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(7) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or a law other than Title 30, chapter 9A, or this part otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

**History:** **En. Sec. 98, Ch. 200, L. 2025.**

**30-12A-106. Discharge of account debtor on controllable account or controllable payment intangible.** (1) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(a) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(b) except as provided in subsection (2), a person that formerly had control of the controllable electronic record.

(2) Subject to subsection (4), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(a) is signed by a person that formerly had control or the person to which control was transferred;

(b) reasonably identifies the controllable account or controllable payment intangible;

(c) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(d) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(e) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(3) After receipt of a notification that complies with subsection (2), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(4) Subject to subsection (8), notification is ineffective under subsection (2):

(a) unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(b) to the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this part; or

(c) at the option of the account debtor, if the notification notifies the account debtor to:

(i) divide a payment;

(ii) make less than the full amount of an installment or other periodic payment; or

(iii) pay any part of a payment by more than one method or to more than one person.

(5) Subject to subsection (8), if requested by the account debtor, the person giving the notification under subsection (2) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (4)(a), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (2).

(6) A person furnishes reasonable proof under subsection (5) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (4)(a), that the transferee has the power to:

(a) avail itself of substantially all the benefit from the controllable electronic record;

(b) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(c) transfer the powers specified in subsections (6)(a) and (6)(b) to another person.

(7) Subject to subsection (8), an account debtor may not waive or vary its rights under subsections (4)(a) and (5) or its option under subsection (4)(c).

(8) This section is subject to law other than this part which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

**History: En. Sec. 99, Ch. 200, L. 2025.**

**30-12A-107. Governing law.** (1) Except as provided in subsection (2), the local law of a controllable electronic record's jurisdiction governs a matter covered by this part.

(2) For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by 30-12A-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(3) The following rules determine a controllable electronic record's jurisdiction under this section:

(a) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this code or this part, that jurisdiction is the controllable electronic record's jurisdiction.

(b) If subsection (3)(a) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this code or this part, that jurisdiction is the controllable electronic record's jurisdiction.

(c) If subsections (3)(a) and (3)(b) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(d) If subsections (3)(a) through (3)(c) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(e) If subsections (3)(a) through (3)(d) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(4) (a) If subsection (3)(e) applies and this part is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this part is the law of the District of Columbia as though this part is in effect in the District of Columbia without material modification.

(b) In this subsection (4), "this part" means Title 30, chapter 12A, part 1.

(5) To the extent subsections (1) and (2) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this part, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(6) The rights acquired under 30-12A-102 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

**History: En. Sec. 100, Ch. 200, L. 2025.**

**Compiler's Comments**

*2025 Code Commissioner Correction:* In (4)(b) the Code Commissioner substituted "Title 30, chapter 12A, part 1" for "Article 12 of Uniform Commercial Code Amendments (2022)" for clarity.

## Part 2
## 2025 Transitional Provisions

**30-12A-201. Title.** This part may be cited as the "Transitional Provisions for Uniform Commercial Code Amendments (2022)".

**History: En. Sec. 101, Ch. 200, L. 2025.**

**30-12A-202. Definitions.** (1) In this part, the following definitions apply:

(a) "Adjustment date" means July 1, 2025, or the date that is 1 year after October 1, 2025, whichever is later.

(b) "Chapter 12A" means chapter 12A of this code.

(c) "Chapter 12A property" means a controllable account, controllable electronic record, or controllable payment intangible.

(2) The following definitions in other articles of the Uniform Commercial Code apply to this part:

(a) "Controllable account". 30-9A-102.
(b) "Controllable electronic record". 30-12A-102.
(c) "Controllable payment intangible". 30-9A-102.
(d) "Financing statement". 30-9A-102.

(3) Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this part.

**History:** **En. Sec. 102, Ch. 200, L. 2025.**

**30-12A-203. Savings clause.** Except as provided in 30-12A-204 through 30-12A-209, a transaction validly entered into before October 1, 2025, and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than Title 30, chapters 1 through 9A and 12A, or, if applicable, Title 30, chapters 1 through 9A and 12A, as though Chapter 200, Laws of 2025, had not taken effect.

**History:** **En. Sec. 103, Ch. 200, L. 2025.**

**30-12A-204. Savings clause.** (1) Except as provided in 30-12A-204 through 30-12A-209, Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, and Title 30, chapter 12A, part 1, apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before October 1, 2025.

(2) Except as provided in subsection (3) and 30-12A-205 through 30-12A-209:

(a) a transaction, lien, or interest in property that was validly entered into, created, or transferred before October 1, 2025, and was not governed by the Uniform Commercial Code, but would be subject to Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, or Title 30, chapter 12A, part 1, if it had been entered into, created, or transferred on or after October 1, 2025, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after October 1, 2025; and

(b) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by Chapter 200, Laws of 2025, or by the law that would apply if Chapter 200, Laws of 2025, had not taken effect.

(3) Chapter 200, Laws of 2025, does not affect an action, case, or proceeding commenced before October 1, 2025.

**History:** **En. Sec. 104, Ch. 200, L. 2025.**

**30-12A-205. Security interest perfected before effective date.** (1) A security interest that is enforceable and perfected immediately before October 1, 2025, is a perfected security interest under Chapter 200, Laws of 2025, if, on October 1, 2025, the requirements for enforceability and perfection under Chapter 200, Laws of 2025, are satisfied without further action.

(2) If a security interest is enforceable and perfected immediately before October 1, 2025, but the requirements for enforceability or perfection under Chapter 200, Laws of 2025, are not satisfied on October 1, 2025, the security interest:

(a) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before October 1, 2025, or the adjustment date;

(b) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under 30-9A-203, as amended by Chapter 200, Laws of 2025, before the adjustment date; and

(c) remains perfected thereafter only if the requirements for perfection under Chapter 200, Laws of 2025, are satisfied before the time specified in subsection (2)(a).

**History:** **En. Sec. 105, Ch. 200, L. 2025.**

**30-12A-206. Security interest unperfected before effective date.** A security interest that is enforceable immediately before October 1, 2025, but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under 30-9A-203, as amended by Chapter 200, Laws of 2025, on October 1, 2025, or before the adjustment date; and

(3) becomes perfected:

(a) without further action, on October 1, 2025, if the requirements for perfection under Chapter 200, Laws of 2025, are satisfied before or at that time; or

(b) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

**History:** **En. Sec. 106, Ch. 200, L. 2025.**

**30-12A-207. Effectiveness of actions taken before effective date.** (1) If action, other than the filing of a financing statement, is taken before October 1, 2025, and the action would have resulted in perfection of the security interest had the security interest become enforceable before October 1, 2025, the action is effective to perfect a security interest that attaches under Chapter 200, Laws of 2025, before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under Chapter 200, Laws of 2025, before the adjustment date.

(2) The filing of a financing statement before October 1, 2025, is effective to perfect a security interest on October 1, 2025, to the extent the filing would satisfy the requirements for perfection under Chapter 200, Laws of 2025.

(3) The taking of an action before October 1, 2025, is sufficient for the enforceability of a security interest on October 1, 2025, if the action would satisfy the requirements for enforceability under Chapter 200, Laws of 2025.

**History:** **En. Sec. 107, Ch. 200, L. 2025.**

**30-12A-208. Priority.** (1) Subject to subsections (2) and (3), Chapter 200, Laws of 2025, determines the priority of conflicting claims to collateral.

(2) Subject to subsection (3), if the priorities of claims to collateral were established before October 1, 2025, Title 30, chapter 9A, as in effect before October 1, 2025, determines priority.

(3) On the adjustment date, to the extent the priorities determined by Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, modify the priorities established before October 1, 2025, the priorities of claims to chapter 12A property established before October 1, 2025, cease to apply.

**History:** **En. Sec. 108, Ch. 200, L. 2025.**

**30-12A-209. Priority of claims when priority rules of Title 30, chapter 9A, do not apply.** (1) Subject to subsections (2) and (3), Title 30, chapter 12A, part 1, determines the priority of conflicting claims to chapter 12A property when the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply.

(2) Subject to subsection (3), when the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply and the priorities of claims to chapter 12A property were established before October 1, 2025, law other than Title 30, chapter 12A, part 1, determines priority.

(3) When the priority rules of Title 30, chapter 9A, as amended by Chapter 200, Laws of 2025, do not apply, to the extent the priorities determined by Chapter 200, Laws of 2025, modify the priorities established before October 1, 2025, the priorities of claims to chapter 12A property established before October 1, 2025, cease to apply on the adjustment date.

**History:** **En. Sec. 109, Ch. 200, L. 2025.**

# CHAPTER 13

# ASSUMED BUSINESS NAMES, TRADEMARKS, AND RELATED RIGHTS

## Part 1 — General Provisions

30-13-101. Repealed.
30-13-102. Repealed.
30-13-103. Repealed.
30-13-104. Repealed.
30-13-105. Repealed.
30-13-106. Repealed.
30-13-107. Repealed.
30-13-108 through 30-13-110 reserved.
30-13-111. Repealed.

30-13-112. Repealed.
30-13-113 through 30-13-120 reserved.
30-13-121. Goodwill of business.
30-13-122. Goodwill transferable.
30-13-123 through 30-13-130 reserved.
30-13-131. Product of the mind — ownership.
30-13-132. Joint authorship.
30-13-133. Transfer.
30-13-134. Effect of publication.
30-13-135. Subsequent inventor or author.
30-13-136. Private writings.
30-13-137 through 30-13-140 reserved.
30-13-141. Definitions.
30-13-142. Unauthorized manufacture of sound recordings prohibited.
30-13-143. Sale of unauthorized sound recordings prohibited.
30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited.
30-13-145. Forfeiture.
30-13-146. Exceptions.
30-13-147. Civil litigation.
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30-13-151. Definitions.
30-13-152. Bad faith assertion of patent right.
30-13-153. Remedies for bad faith assertion of patent right.
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### Part 2 — Assumed Business Names

30-13-201. Definitions.
30-13-202. Registration of assumed business name — when prohibited — contest procedure — rulemaking authority.
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30-13-207. Application for renewal of assumed business name.
30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate.
30-13-209. Amendment.
30-13-210. Filing amendment to registration of assumed business name — issuance of certificate.
30-13-211. Reservation of proposed assumed business name.
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30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business.
30-13-215. Effect of transacting business without certificate.
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30-13-217. Fees and charges to be established and collected by secretary of state.
30-13-218. Execution constituting affirmation — penalty — warning.
30-13-219. Political party central committee assumed business name.
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30-13-221. Filing of facsimile copy.

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30-13-301. Definitions.
30-13-302. Repealed.
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30-13-304 through 30-13-309 reserved.
30-13-310. Filing of applications.
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30-13-313. Duration and renewal.
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30-13-315. Assignment — change of name — other instruments.
30-13-316. Repealed.
30-13-317. Records.
30-13-318. Cancellation.
30-13-319. Repealed.
30-13-320. Secretary of state to establish and collect fees.
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30-13-331. Classification.
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30-13-333. Infringement.
30-13-334. Injury to business reputation — dilution.
30-13-335. Remedies.
30-13-336. Common-law rights.
30-13-337. Forum for actions regarding registration — service on out-of-state registrants.
30-13-338. Trademark counterfeiting — presumption — penalties — restitution — forfeiture.
30-13-339 and 30-13-340 reserved.
30-13-341. Repealed.
30-13-342. Political party central committee marks.

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## Part 1
## General Provisions

**30-13-101. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 3160, Pol. C. 1895; re-en. Sec. 2036, Rev. C. 1907; re-en. Sec. 4286, R.C.M. 1921; Cal. Pol. C. Sec. 3196; re-en. Sec. 4286, R.C.M. 1935; R.C.M. 1947, 85-101.**

**30-13-102. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 1370, Civ. C. 1895; re-en. Sec. 4565, Rev. C. 1907; re-en. Sec. 6812, R.C.M. 1921; Cal. Civ. C. Sec. 991; Based on Field Civ. C. Sec. 435; re-en. Sec. 6812, R.C.M. 1935; R.C.M. 1947, 67-1110.**

**30-13-103. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2037, Rev. C. 1907; re-en. Sec. 4287, R.C.M. 1921; Cal. Pol. C. Sec. 3197; re-en. Sec. 4287, R.C.M. 1935; R.C.M. 1947, 85-102.**

**30-13-104. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 1, p. 103, L. 1899; re-en. Sec. 2038, Rev. C. 1907; re-en. Sec. 4288, R.C.M. 1921; Cal. Pol. C. Sec. 3198; amd. Sec. 1, Ch. 68, L. 1931; re-en. Sec. 4288, R.C.M. 1935; amd. Sec. 16, Ch. 117, L. 1961; R.C.M. 1947, 85-103.**

**30-13-105. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 3163, Pol. C. 1895; re-en. Sec. 2039, Rev. C. 1907; re-en. Sec. 4289, R.C.M. 1921; Cal. Pol. C. Sec. 3199; re-en. Sec. 4289, R.C.M. 1935; R.C.M. 1947, 85-104.**

**30-13-106. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: En. Sec. 3300, Pol. C. 1895; re-en. Sec. 2103, Rev. C. 1907; re-en. Sec. 4291, R.C.M. 1921; re-en. Sec. 4291, R.C.M. 1935; R.C.M. 1947, 85-106.**

**30-13-107. Repealed.** Sec. 22, Ch. 429, L. 1979.

**History: (1)En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R.C.M. 1921; re-en. Sec. 4290, R.C.M. 1935; amd. Sec. 22, Ch. 513, L. 1973; amd. Sec. 6, Ch. 265, L. 1977; Sec. 85-105, R.C.M. 1947; (2) En. Sec. 3301, Pol. C. 1895; re-en. Sec. 2104, Rev. C. 1907; re-en. Sec. 4292, R.C.M. 1921; re-en. Sec. 4292, R.C.M. 1935; amd. Sec. 7, Ch. 265, L. 1977; Sec. 85-107, R.C.M. 1947; R.C.M. 1947, 85-105, 85-107.**

**30-13-108 through 30-13-110 reserved.**

**30-13-111. Repealed.** Sec. 18, Ch. 260, L. 1979.

**History: En. Sec. 3285, Civ. C. 1895; re-en. Sec. 5509, Rev. C. 1907; re-en. Sec. 8024, R.C.M. 1921; re-en. Sec. 8024, R.C.M. 1935; R.C.M. 1947, 63-606.**

**30-13-112. Repealed.** Sec. 37, Ch. 291, L. 2009.

**History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R.C.M. 1921; re-en. Sec. 6897, R.C.M. 1935; R.C.M. 1947, 73-109.**

**30-13-113 through 30-13-120 reserved.**

**30-13-121. Goodwill of business.** The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

**History: En. Sec. 1371, Civ. C. 1895; re-en. Sec. 4566, Rev. C. 1907; re-en. Sec. 6813, R.C.M. 1921; Cal. Civ. C. Sec. 992; Field Civ. C. Sec. 436; re-en. Sec. 6813, R.C.M. 1935; R.C.M. 1947, 67-1111.**

**Cross-References**

Warranty on sale of goodwill, 30-11-221.

**30-13-122. Goodwill transferable.** The goodwill of a business is property, transferable like any other.

**History: En. Sec. 1372, Civ. C. 1895; re-en. Sec. 4567, Rev. C. 1907; re-en. Sec. 6814, R.C.M. 1921; Cal. Civ. C. Sec. 993; Field Civ. C. Sec. 437; re-en. Sec. 6814, R.C.M. 1935; R.C.M. 1947, 67-1112.**

**Cross-References**

Warranty on sale of goodwill, 30-11-221.

**30-13-123 through 30-13-130 reserved.**

**30-13-131. Product of the mind — ownership.** The author of any product of the mind, whether it is an invention, a composition in letters or art, or a design, with or without delineation or other graphical representation, has an exclusive ownership of the product and in the representation or expression of the product that continues as long as the product and the representations or expressions of the product made by the author remain in the author's possession.

**History: En. Sec. 1360, Civ. C. 1895; re-en. Sec. 4559, Rev. C. 1907; re-en. Sec. 6806, R.C.M. 1921; Cal. Civ. C. Sec. 980; Field Civ. C. Sec. 429; re-en. Sec. 6806, R.C.M. 1935; R.C.M. 1947, 67-1104; amd. Sec. 949, Ch. 56, L. 2009.**

**Cross-References**

State ownership of work of art, 22-2-407.

Sale of fine art by dealer and rights of artist, Title 22, ch. 2, part 5.

**30-13-132. Joint authorship.** Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

(1) if the product is single, in equal proportions;

(2) if it is not single, in proportion to the contribution of each.

**History: En. Sec. 1361, Civ. C. 1895; re-en. Sec. 4560, Rev. C. 1907; re-en. Sec. 6807, R.C.M. 1921; Cal. Civ. C. Sec. 981; Field Civ. C. Sec. 430; re-en. Sec. 6807, R.C.M. 1935; R.C.M. 1947, 67-1105.**

**30-13-133. Transfer.** The owner of any product of the mind or of any representation or expression of a product of the mind may transfer the owner's interest in the product.

**History: En. Sec. 1362, Civ. C. 1895; re-en. Sec. 4561, Rev. C. 1907; re-en. Sec. 6808, R.C.M. 1921; Cal. Civ. C. Sec. 982; Field Civ. C. Sec. 431; re-en. Sec. 6808, R.C.M. 1935; R.C.M. 1947, 67-1106; amd. Sec. 7, Ch. 137, L. 1979; amd. Sec. 950, Ch. 56, L. 2009.**

**30-13-134. Effect of publication.** If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person without responsibility to the owner, so far as the law of this state is concerned.

**History: En. Sec. 1363, Civ. C. 1895; re-en. Sec. 4562, Rev. C. 1907; re-en. Sec. 6809, R.C.M. 1921; Cal. Civ. C. Sec. 983; Field Civ. C. Sec. 432; re-en. Sec. 6809, R.C.M. 1935; R.C.M. 1947, 67-1107.**

**30-13-135. Subsequent inventor or author.** If the owner of a product of the mind does not make the product public, any other person subsequently and originally producing the same thing has the same right in the product as the prior author, which is exclusive to the same extent against all persons except the prior author or those claiming under the prior author.

**History: En. Sec. 1364, Civ. C. 1895; re-en. Sec. 4563, Rev. C. 1907; re-en. Sec. 6810, R.C.M. 1921; Cal. Civ. C. Sec. 984; Field Civ. C. Sec. 433; re-en. Sec. 6810, R.C.M. 1935; R.C.M. 1947, 67-1108; amd. Sec. 951, Ch. 56, L. 2009.**

**30-13-136. Private writings.** Letters and other private communications in writing belong to the person to whom they are addressed and delivered, but they cannot be published against the will of the writer except by authority of law.

**History: En. Sec. 1365, Civ. C. 1895; re-en. Sec. 4564, Rev. C. 1907; re-en. Sec. 6811, R.C.M. 1921; Cal. Civ. C. Sec. 985; Field Civ. C. Sec. 434; re-en. Sec. 6811, R.C.M. 1935; R.C.M. 1947, 67-1109.**

**30-13-137 through 30-13-140 reserved.**

**30-13-141. Definitions.** As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(2) "Performer" means the person or persons appearing in a performance.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

**History:** **En. Sec. 1, Ch. 367, L. 1977; R.C.M. 1947, 85-601; amd. Sec. 79, Ch. 120, L. 1993.**

**30-13-142. Unauthorized manufacture of sound recordings prohibited.** (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

**History:** **En. Sec. 2, Ch. 367, L. 1977; R.C.M. 1947, 85-602; amd. Sec. 7, Ch. 198, L. 1981.**

**Cross-References**

Trademarks, Title 30, ch. 13, part 3.
Unfair trade practices and consumer protection, Title 30, ch. 14.

**30-13-143. Sale of unauthorized sound recordings prohibited.** (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**History:** **En. Sec. 3, Ch. 367, L. 1977; R.C.M. 1947, 85-603.**

**Cross-References**

Trademarks, Title 30, ch. 13, part 3.
Unfair trade practices and consumer protection, Title 30, ch. 14.

**30-13-144. Sale of sound recording without name of manufacturer and name of performer or group prohibited.** (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**History:** **En. Sec. 4, Ch. 367, L. 1977; R.C.M. 1947, 85-604.**

**Cross-References**

Trademarks, Title 30, ch. 13, part 3.
Unfair trade practices and consumer protection, Title 30, ch. 14.

**30-13-145. Forfeiture.** Any article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

**History:** **En. Sec. 5, Ch. 367, L. 1977; R.C.M. 1947, 85-605.**

**30-13-146. Exceptions.** Sections 30-13-141 through 30-13-147 do not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

**History: En. Sec. 6, Ch. 367, L. 1977; R.C.M. 1947, 85-606.**

**30-13-147. Civil litigation.** Sections 30-13-141 through 30-13-147 neither enlarge nor diminish the rights of parties in civil litigation.

**History: En. Sec. 7, Ch. 367, L. 1977; R.C.M. 1947, 85-607.**

**30-13-148 through 30-13-150 reserved.**

**30-13-151. Definitions.** As used in 30-13-151 through 30-13-154, the following definitions apply:

(1) "Affiliated person" means a person under common ownership or control of an intended recipient.

(2) "Intended recipient" means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the person's ordinary business and that is or later becomes the subject of a patent infringement allegation.

(3) "Person" means a natural person, partnership, corporation, company, trust, business entity, or association and an agent, employee, partner, officer, director, member, associate, or trustee of a person.

**History: En. Sec. 1, Ch. 186, L. 2015.**

**30-13-152. Bad faith assertion of patent right.** (1) A person may not, in connection with the assertion of a United States patent, send or cause a person to send a written or electronic communication stating in bad faith that the intended recipient or an affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person if:

(a) the communication falsely states that litigation has been filed against the intended recipient or threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved; or

(b) the assertions contained in the communication lack a reasonable basis in fact or law because:

(i) the person asserting the patent is not or does not represent a person with the current right to license the patent to or enforce the patent against the intended recipient or an affiliated person;

(ii) the communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final judicial or administrative decision;

(iii) the communication seeks compensation on account of activities undertaken after the patent has expired; or

(iv) the content of the communication fails to include information necessary to inform an intended recipient or affiliated person about the patent assertion by failing to include one of the following:

(A) the identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or an affiliated person;

(B) the patent number issued by the United States patent and trademark office for a patent that is alleged to have been infringed; or

(C) the factual allegations concerning the specific area in which the intended recipient's or affiliated person's technology, products, or services infringed the patent or are covered by the claims of the patent.

(2) It is not a violation of this section for a person who owns or has the right to license or enforce a patent to:

(a) advise others of that ownership or right of license or enforcement;

(b) communicate to others that a patent is available for license or sale;

(c) notify another of the infringement of the patent; or

(d) if the person is not acting in bad faith, seek compensation for past or present infringement or for a license to the patent.

(3) Sections 30-13-151 through 30-13-154 do not apply to a written or electronic communication sent by:

(a) an owner of a patent or a licensee who is using the patent in connection with substantial research, development, production, manufacturing, processing, or delivery of products or materials;

(b) an institution of higher education; or

(c) a technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

(4) This section does not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C. 271(e)(2).

**History:** **En. Sec. 2, Ch. 186, L. 2015.**

**30-13-153. Remedies for bad faith assertion of patent right.** (1) The attorney general may enforce 30-13-151 through 30-13-154 and conduct civil investigations and bring civil actions for violations of 30-13-151 through 30-13-154.

(2) In an action brought by the attorney general under 30-13-151 through 30-13-154, the court may award or impose any relief available under 30-13-154.

(3) An intended recipient or affiliated person may bring a cause of action for a violation of 30-13-151 through 30-13-154 and may seek relief provided for in 30-13-154.

(4) In addition to the relief provided for in 30-13-154, upon a motion by the attorney general or a party bringing a claim pursuant to subsection (3) and a finding by the court that there is a reasonable likelihood that a person violated 30-13-152, the court may require the person to post a bond in an amount equal to a good faith estimate of the costs to litigate a claim and amounts reasonably likely to be recovered if an action were to be brought pursuant to this section. A hearing must be held upon request of any party.

**History:** **En. Sec. 3, Ch. 186, L. 2015.**

**30-13-154. Damages.** A court may award the following relief to a plaintiff who prevails in an action brought pursuant to 30-13-151 through 30-13-154:

(1) compensatory damages;

(2) costs and fees, including reasonable attorney fees; and

(3) punitive damages in an amount equal to three times the total of compensatory damages and costs and fees.

**History:** **En. Sec. 4, Ch. 186, L. 2015.**

## Part 2
## Assumed Business Names

**Part Cross-References**

Assumed business names and trademarks of central committees, 13-38-107.
Business trust name, 35-5-201.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.
Rural cooperative utility names, 35-18-201.

**30-13-201. Definitions.** As used in this part, the following definitions apply:

(1) "Assumed business name" means any business name other than the full, true, and correct name of a person.

(2) "Business name identifier" means a word or words used by a business entity in its name or title that describes the type or form of its business. Business name identifiers include but are not limited to corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, and abbreviations of those terms.

(3) "Person" means any individual, partnership, corporation, limited partnership, limited liability company, limited liability partnership, or other association.

**History:** **En Sec. 1, Ch. 260, L. 1979; amd. Sec. 1, Ch. 449, L. 1995; amd. Sec. 1, Ch. 27, L. 2001.**

**30-13-202. Registration of assumed business name — when prohibited — contest procedure — rulemaking authority.** (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in 35-14-401.

(4) The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state.

**History:** **En Sec. 2, Ch. 260, L. 1979; amd. Sec. 134, Ch. 575, L. 1981; amd. Sec. 1, Ch. 455, L. 1983; amd. Sec. 80, Ch. 120, L. 1993; amd. Sec. 2, Ch. 449, L. 1995; amd. Sec. 2, Ch. 27, L. 2001; amd. Sec. 1, Ch. 110, L. 2011; (4)En. Sec. 1, Ch. 166, L. 2015; amd. Sec. 226, Ch. 271, L. 2019.**

**30-13-203. Application for registration of assumed business name.** A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and business mailing address of the applicant;

(2) the complete proposed assumed business name; and

(3) a description of business transacted under the proposed assumed name.

**History:** **En Sec. 3, Ch. 260, L. 1979; amd. Sec. 2, Ch. 174, L. 1983; amd. Sec. 5, Ch. 366, L. 1997; amd. Sec. 1, Ch. 229, L. 1999; amd. Sec. 1, Ch. 26, L. 2011; amd. Sec. 2, Ch. 166, L. 2015.**

**30-13-204. Filing application for registration — issuance of certificate.** (1) The applicant shall complete and submit an application for registration of an assumed business name along with all applicable fees to the secretary of state. If the secretary of state finds that the application complies with the provisions of this part, the secretary of state shall:

(a) endorse on the application the word "filed" and the date on which the application was filed;

(b) file the application in the secretary of state's office; and

(c) issue a certificate of registration to the applicant.

(2) The registration of an assumed business name remains in effect for 5 years unless canceled earlier.

**History:** **En Sec. 4, Ch. 260, L. 1979; amd. Sec. 1, Ch. 131, L. 1983; amd. Sec. 1, Ch. 71, L. 2005; amd. Sec. 1, Ch. 23, L. 2017.**

**30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited.** No foreign corporation or foreign limited partnership which does not have an effective certificate of authority or certificate of registration to transact business in this state may register an assumed business name as provided for in this part.

**History:** **En Sec. 5, Ch. 260, L. 1979; amd. Sec. 2, Ch. 455, L. 1983.**

**30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) If the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

**History:** **En Sec. 6, Ch. 260, L. 1979; amd. Sec. 3, Ch. 449, L. 1995; amd. Sec. 6, Ch. 366, L. 1997; amd. Sec. 3, Ch. 75, L. 2003; amd. Sec. 2, Ch. 26, L. 2011.**

**Cross-References**

Limited liability company — administrative dissolution — rules, 35-8-209.

**30-13-207. Application for renewal of assumed business name.** An application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete assumed business name;
(2) the name and business mailing address of the applicant; and
(3) a description of business transacted.

**History: En Sec. 7, Ch. 260, L. 1979; amd. Sec. 2, Ch. 131, L. 1983; amd. Sec. 3, Ch. 174, L. 1983; amd. Sec. 2, Ch. 229, L. 1999; amd. Sec. 4, Ch. 75, L. 2003; amd. Sec. 3, Ch. 26, L. 2011.**

**30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate.** If the secretary of state finds that the application complies with the provisions of this part and that all fees have been paid, the secretary of state shall:

(1) endorse on the application the word "filed" and the date on which the application was filed;
(2) file the application in the secretary of state's office; and
(3) issue a certificate of renewal to the applicant.

**History: En Sec. 8, Ch. 260, L. 1979; amd. Sec. 3, Ch. 131, L. 1983; amd. Sec. 2, Ch. 71, L. 2005.**

**30-13-209. Amendment.** An amendment to registration of an assumed business name must be filed with the secretary of state within 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;
(2) there is a change in the description of the business transacted;
(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or
(4) the registrant wishes to change the name of a registered assumed business name.

**History: En Sec. 9, Ch. 260, L. 1979; amd. Sec. 4, Ch. 449, L. 1995; amd. Sec. 3, Ch. 229, L. 1999.**

**30-13-210. Filing amendment to registration of assumed business name — issuance of certificate.** (1) An application for amended registration of an assumed business name must be filed with the secretary of state and must include:

(a) the complete assumed business name prior to adoption of the amendment;
(b) the complete new assumed business name, if applicable;
(c) the name and address of the registrant, including street name and number of the registrant's business office;
(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;
(e) if a person who has had an interest in a business with a registered assumed name withdraws or dies, a statement that the person has withdrawn or died;
(f) a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration; and
(g) all other information determined by the secretary of state to be necessary.

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part and that all applicable fees have been paid, the secretary of state shall:

(a) endorse on the application for amendment the word "filed" and the date on which the application for amendment was filed;
(b) file the original application for amendment in the secretary of state's office; and
(c) issue a certificate of amendment to the registrant.

(3) If the registrant of an assumed business name fails to comply with the requirements of this section, the secretary of state shall cancel the registration.

**History: En Sec. 10, Ch. 260, L. 1979; amd. Sec. 4, Ch. 131, L. 1983; amd. Sec. 7, Ch. 366, L. 1997; amd. Sec. 4, Ch. 229, L. 1999; amd. Sec. 3, Ch. 71, L. 2005.**

**30-13-211. Reservation of proposed assumed business name.** Any authorized person who has not commenced business but intends to commence business may reserve an assumed business name that is not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(1) the complete assumed business name to be reserved;
(2) the name and address, including street name and number, if any, of the applicant;
(3) the date the applicant intends to commence business; and
(4) a description of business the applicant intends to transact.

**History:** **En Sec. 11, Ch. 260, L. 1979; amd. Sec. 5, Ch. 229, L. 1999.**

**Cross-References**

Limited liability company — reservation of name, 35-8-104.
Limited partnership — reservation of name, 35-12-506.

**30-13-212. Filing application for reservation of assumed business name — issuance of certificate.** The applicant shall complete and submit an application for reservation of an assumed business name and all applicable fees to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, the secretary of state shall:

(1) endorse on the application the word "filed" and the date on which the application was filed;
(2) file the application in the secretary of state's office; and
(3) issue a certificate of reservation to the applicant.

**History:** **En Sec. 12, Ch. 260, L. 1979; amd. Sec. 5, Ch. 131, L. 1983; amd. Sec. 4, Ch. 174, L. 1983; amd. Sec. 4, Ch. 71, L. 2005.**

**30-13-213. Voluntary cancellation of registration of assumed business name.** (1) When the registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall deliver to the secretary of state a cancellation of registration of an assumed business name form, which must include but not be limited to the following information:

(a) the complete registered assumed business name to be canceled; and
(b) the name and business mailing address of the registrant of record.

(2) If the secretary of state finds the form complies with the provisions of this section, the secretary of state shall file it and deliver a letter acknowledging cancellation of the filing to the registrant of record.

**History:** **En Sec. 13, Ch. 260, L. 1979; amd. Sec. 5, Ch. 449, L. 1995; amd. Sec. 4, Ch. 26, L. 2011; amd. Sec. 2, Ch. 23, L. 2017.**

**30-13-214. Cancellation of registration of assumed business name upon dissolution of domestic corporation — withdrawal or revocation of foreign corporation's authority to transact business.** (1) If the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.

(2) If the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

**History:** **En Sec. 14, Ch. 260, L. 1979.**

**30-13-215. Effect of transacting business without certificate.** No person or persons conducting or transacting business in this state without an effective certificate of registration of an assumed business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name.

**History:** **En Sec. 15, Ch. 260, L. 1979.**

**30-13-216. Evidentiary effect of certificates and documents of secretary of state.** All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in the secretary of state's office in accordance with the provisions of this part when certified by the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated in the certificate or document.

**History:** **En Sec. 16, Ch. 260, L. 1979; amd. Sec. 952, Ch. 56, L. 2009.**

**Cross-References**

Entries in official books and records prima facie evidence, 26-1-605.

**30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The secretary of state shall establish, charge, collect, and deposit, in accordance with 2-15-405:

(a) fees for filing documents and issuing certificates pursuant to this part; and

(b) miscellaneous charges for other services provided by the secretary of state pursuant to this part.

(2) Fees and charges may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party.

**History: En Sec. 17, Ch. 260, L. 1979; amd. Sec. 3, Ch. 119, L. 1985; amd. Sec. 6, Ch. 449, L. 1995; amd. Sec. 8, Ch. 366, L. 1997; amd. Sec. 15, Ch. 396, L. 2001; amd. Sec. 5, Ch. 26, L. 2011.**

**30-13-218. Execution constituting affirmation — penalty — warning.** (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this part.

**History: En. Sec. 1, Ch. 174, L. 1983; amd. Sec. 953, Ch. 56, L. 2009.**

**Cross-References**

False swearing, 45-7-202.

**30-13-219. Political party central committee assumed business name.** Only a city, county, or state central committee of a political party may register an assumed business name on behalf of the central committee. The secretary of state may not accept an application for an assumed business name of a city, county, or state central committee of a political party unless it is accompanied by a resolution of the relevant central committee attesting that it is the entity applying for an assumed business name.

**History: En. Sec. 4, Ch. 198, L. 2019.**

**Cross-References**

Assumed business names and trademarks of central committees, 13-38-107.

**30-13-220 reserved.**

**30-13-221. Filing of facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

**History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 3, Ch. 290, L. 1997.**

## Part 3
## Trademarks

**Part Cross-References**

Assumed business names and trademarks of central committees, 13-38-107.

**30-13-301. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandoned" with respect to a mark, means the occurrence of either of the following:

(a) when a mark's use has been discontinued with intent not to resume use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years constitutes prima facie evidence of abandonment.

(b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(2) "Applicant" means the person filing an application for registration of a mark under this part or the person's legal representatives, successors, or assigns.

(3) "Counterfeit mark" means a spurious mark:

(a) that is applied to. or used in connection with any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services;

(b) that is identical with or substantially indistinguishable from a mark that is in use and is registered in this state or any other state or on the principal register in the United States patent and trademark office, whether or not the person employing the mark knew the mark was registered; and

(c) the application or use of which is:

(i) likely to deceive or cause confusion or mistake; or

(ii) otherwise intended to be used on or in connection with the goods or services for which a registered mark is registered.

(4) "Counterfeiter" means a person employing a counterfeit mark.

(5) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:

(a) competition between the owner of the famous mark and other parties; or

(b) likelihood of confusion, mistake, or deception.

(6) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(7) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization capable of suing and being sued in a court of law.

(8) "Registrant" means the person to whom the registration of a mark under this part is issued or the person's legal representatives, successors, or assigns.

(9) "Retail value" means:

(a) the counterfeiter's regular selling price for goods or services unless the goods or services bearing a counterfeit mark or the items and components described in subsection (9)(b) would appear to a reasonably prudent person to be authentic, in which case the retail value is the price of the authentic counterpart; or

(b) in the case of items bearing a counterfeit mark that are components of a finished product and in the case of labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services, the counterfeiter's regular selling price of the finished product on or in which the items or component would be utilized.

(10) "Service mark" means any word, name, symbol, or device or any combination of words, names, symbols, or devices used by a person to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor.

(11) "Trade name" means any name used by a person to identify a business or vocation of that person.

(12) "Trademark" means any word, name, symbol, device, or any combination of words, names, symbols, or devices used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

(13) "Use" means the bona fide use of a mark in the ordinary course of trade and not a use merely to reserve a right in a mark. For the purposes of this part, a mark is considered to be in use:

(a) on goods when:

(i) it is placed in any manner on the goods or other containers or the displays associated with the goods or on the tags or labels affixed to the goods; or

(ii) if the nature of the goods makes placement on the goods or containers impracticable, it is placed on documents associated with the goods or their sale; and

(iii) the goods are sold or transported in commerce in this state; and

(b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

**History: En. Sec. 1, Ch. 429, L. 1979; amd. Sec. 81, Ch. 120, L. 1993; amd. Sec. 1, Ch. 257, L. 2003; amd. Sec. 1, Ch. 177, L. 2009.**

**30-13-302. Repealed.** Sec. 16, Ch. 257, L. 2003.

**History: En. Sec. 2, Ch. 429, L. 1979.**

**30-13-303. Registrability.** (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) consists of or comprises immoral, deceptive, or scandalous matter;

(b) consists of or comprises matter that may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute;

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation of the flag or coat of arms of any of the enumerated entities;

(d) consists of or comprises the name, signature, or portrait of any living individual, except with the individual's written consent;

(e) consists of a mark that:

(i) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) consists of or comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) Subsection (1)(e) does not prevent the registration of a mark used in this state by the applicant that has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use of the mark or service mark as a mark by the applicant in this state or elsewhere for the 5 years before the date on which the claim of distinctiveness is made.

**History: En. Sec. 3, Ch. 429, L. 1979; amd. Sec. 2, Ch. 257, L. 2003.**

**30-13-304 through 30-13-309 reserved.**

**30-13-310. Filing of applications.** (1) Upon the filing of an application for registration and payment of the application fee, the secretary of state may cause the application to be examined for conformity with this part.

(2) The applicant shall provide any additional pertinent information requested by the secretary of state, including a description of a design mark, and may make or authorize the secretary of state to make amendments to the application that may be reasonably requested by the secretary of state or considered by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary of state may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. A disclaimer may not prejudice or affect the applicant's or registrant's rights then existing or later arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary of state upon the application submitted by the applicant upon the applicant's agreement, or the secretary of state may require that a new application be submitted.

(5) If the applicant is found not to be entitled to registration, the secretary of state shall advise the applicant of that finding and of the reasons for the finding. The applicant must have a reasonable period of time, specified by the secretary of state, in which to reply or to amend the application. In the event of a reply or amended application, the application must be reexamined. This procedure may be repeated until:

(a) the secretary of state finally refuses registration of the mark; or

(b) the applicant fails to reply or amend the application within the specified period, in which case the application is considered abandoned.

(6) If the secretary of state finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel registration. The writ may be granted, but without costs to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) If applications are concurrently being processed by the secretary of state seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary of state shall grant priority to the applications in order of filing. If a prior application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark in accordance with the provisions of 30-13-318.

**History: En. Sec. 4, Ch. 257, L. 2003.**

**30-13-311. Application for registration.** (1) Subject to the limitations set forth in this part, a person who uses a mark may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for registration and:

(i) if a corporation, the state of incorporation;

(ii) if a limited liability company, the state of organization;

(iii) if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;

(b) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with the goods or services and the class in which the goods or services fall;

(c) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in business; and

(d) a statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered the mark, either federally or in this state, or has the right to use the mark either in the identical form or in a form that so nearly resembles the mark as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.

(2) The secretary of state may require a statement as to whether an application to register the mark or portions or a composite of the mark has been filed by the applicant or a predecessor in interest in the United States patent and trademark office. If an application has been filed, the applicant shall provide complete information with respect to that filing, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for nonregistration.

(3) The secretary of state may require that a drawing of the mark, complying with requirements that the secretary of state may specify, accompany the application.

(4) The application must be signed and verified by the applicant or a member of the firm or limited liability company or an officer of the corporation or association applying.

(5) The application must be accompanied by three specimens showing the mark as actually used.

(6) The application for registration must be accompanied by a filing fee as provided for in 30-13-320.

**History: En. Sec. 4, Ch. 429, L. 1979; amd. Sec. 6, Ch. 131, L. 1983; amd. Sec. 6, Ch. 174, L. 1983; amd. Sec. 4, Ch. 119, L. 1985; amd. Sec. 82, Ch. 120, L. 1993; amd. Sec. 3, Ch. 257, L. 2003.**

**30-13-312. Certificate of registration.** (1) Upon compliance by the applicant with the requirements of this part, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration must be issued under the signature of the secretary of state and the seal of the state. The certificate must show:

(a) the name and business address of the person claiming ownership of the mark and, if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;

(b) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state;

(c) the class of goods or services and a description of the goods or services on or in connection with which the mark is used;

(d) a reproduction of the mark; and

(e) the registration date and the term of the registration.

(2) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy of the certificate duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of the mark in any judicial proceeding in any court of this state.

**History:** **En. Sec. 5, Ch. 429, L. 1979; amd. Sec. 7, Ch. 131, L. 1983; amd. Sec. 5, Ch. 257, L. 2003.**

**30-13-313. Duration and renewal.** (1) Registration of a mark under this part is effective for a term of 5 years from the date of registration, and upon application filed within 6 months prior to the expiration of that term, in a manner complying with the requirements of the secretary of state, the registration may be renewed for another 5 years.

(2) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

(3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

(4) Any registration in force on July 1, 2003, continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary of state complying with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of the registration.

(5) All applications for renewal under this part must include a verified statement that the mark has been and is still in use, a specimen showing actual use of the mark on or in connection with the goods or services, and the following information:

(a) the original identification number assigned by the secretary of state;

(b) the name subscribed for the mark;

(c) the name and business mailing address of the person claiming ownership of the mark;

(d) if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state; and

(e) the class of goods or services and a description of the goods or services on or in connection with which the mark is used.

**History:** **En. Sec. 6, Ch. 429, L. 1979; amd. Sec. 7, Ch. 174, L. 1983; amd. Sec. 5, Ch. 119, L. 1985; amd. Sec. 6, Ch. 257, L. 2003; amd. Sec. 6, Ch. 26, L. 2011.**

**30-13-314. Repealed.** Sec. 16, Ch. 257, L. 2003.

**History:** **En. Sec. 7, Ch. 429, L. 1979; amd. Sec. 8, Ch. 131, L. 1983.**

**30-13-315. Assignment — change of name — other instruments.** (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment must be by written, duly executed instruments and may be recorded with the secretary of state upon the payment of the recording fee payable to the secretary of state. Upon recording the assignment, the secretary of state shall issue a new certificate in the name of the assignee for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to the subsequent purchase.

(2) Any applicant or registrant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the applicant or registrant with the secretary of state upon the payment of the recording fee. The secretary of state may issue in the name of the assignee a certificate of registration of an assigned application. The secretary of state may issue, in the name of the assignee, a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments that relate to a mark registered or an application pending pursuant to this part, such as licenses, security interests, or mortgages, may be recorded at the discretion of the secretary of state if the instrument is in writing and is duly executed.

(4) An acknowledgment is prima facie evidence of the execution of an assignment or other instrument, and when recorded by the secretary of state, the record is prima facie evidence of execution.

(5) A photocopy of any instrument referred to in subsections (1) through (3) must be accepted for recording if it is certified by any of the parties to the instrument or their successors to be a true and correct copy of the original.

**History: En. Sec. 8, Ch. 429, L. 1979; amd. Sec. 9, Ch. 131, L. 1983; amd. Sec. 6, Ch. 119, L. 1985; amd. Sec. 7, Ch. 257, L. 2003.**

**30-13-316. Repealed.** Sec. 16, Ch. 257, L. 2003.

**History: En. Sec. 9, Ch. 429, L. 1979; amd. Sec. 10, Ch. 131, L. 1983.**

**30-13-317. Records.** The secretary of state shall keep for public examination a record of all marks registered or renewed under this part as well as a record of all documents recorded pursuant to 30-13-315.

**History: En. Sec. 10, Ch. 429, L. 1979; amd. Sec. 8, Ch. 257, L. 2003.**

**30-13-318. Cancellation.** The secretary of state shall cancel from the register, in whole or in part:

(1) any registration concerning which the secretary of state receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) each registration granted under this part and not renewed in accordance with the provisions of this part;

(3) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the mark is or has become the generic name for the goods or services or a portion of the goods or services for which it has been registered;

(f) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(4) a registration that is ordered to be canceled by a court of competent jurisdiction on any grounds.

**History: En. Sec. 11, Ch. 429, L. 1979; amd. Sec. 8, Ch. 174, L. 1983; amd. Sec. 9, Ch. 257, L. 2003.**

**30-13-319. Repealed.** Sec. 16, Ch. 257, L. 2003.

**History: En. Sec. 5, Ch. 174, L. 1983.**

**30-13-320. Secretary of state to establish and collect fees.** The secretary of state shall provide for collection of fees and miscellaneous charges, set and deposited in accordance with 2-15-405, for filing documents and issuing certificates as required by this part.

**History: En. Sec. 1, Ch. 119, L. 1985; amd. Sec. 16, Ch. 396, L. 2001.**

**Cross-References**

Duties of Secretary of State, 2-15-401.

**30-13-321 through 30-13-330 reserved.**

**30-13-331. Classification.** The secretary of state shall adopt rules establishing a classification of goods and services for convenience of administration of this part. The classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods upon which or services with which the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services must conform to the classification adopted by the United States patent and trademark office.

**History:** **En. Sec. 12, Ch. 429, L. 1979; amd. Sec. 10, Ch. 257, L. 2003.**

**30-13-332. Fraudulent registration.** Any person who, for the person's own sake or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the provisions of this part by knowingly making any false or fraudulent representation or declaration, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of the filing or registration. Damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

**History:** **En. Sec. 13, Ch. 429, L. 1979; amd. Sec. 11, Ch. 257, L. 2003.**

**30-13-333. Infringement.** (1) In addition to the penalties and remedies provided for in 30-13-338 and subject to the provisions of 30-13-336 and subsection (2) of this section, a person is liable in a civil action brought by the registrant under 30-13-335 if the person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any registered mark and applies the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of the goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake or to deceive.

**History:** **En. Sec. 14, Ch. 429, L. 1979; amd. Sec. 12, Ch. 257, L. 2003; amd. Sec. 3, Ch. 177, L. 2009.**

**30-13-334. Injury to business reputation — dilution.** (1) The owner of a mark that is famous in this state is entitled, subject to the principles of equity and upon terms that seem reasonable to the court, to an injunction against another person's commercial use of a mark or trade name if the use begins after the mark has become famous and causes dilution of the distinctive quality of the mark and may obtain other relief as provided in this section.

(2) In determining whether a mark is distinctive and famous, a court may consider factors including but not limited to:

(a) the degree of inherent or acquired distinctiveness of the mark in this state;

(b) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;

(c) the duration and extent of advertising and publicity of the mark in this state;

(d) the geographical extent of the trading area in which the mark is used;

(e) the channels of trade for the goods or services with which the mark is used;

(f) the degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;

(g) the nature and extent of use of the same or similar mark by third parties; and

(h) whether the mark is the subject of a registration in this state or a federal registration under the act of March 3, 1881, or under the act of February 20, 1905, or on the principal register.

(3) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If a willful intent is proven, the owner is also entitled to the remedies set forth in this part, subject to the discretion of the court and the principles of equity.

(4) The following are not actionable under this section:

(a) fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;

(b) noncommercial use of the mark; or

(c) all forms of news reporting and news commentary.

**History:** **En. Sec. 15, Ch. 429, L. 1979; amd. Sec. 13, Ch. 257, L. 2003.**

**30-13-335. Remedies.** (1) An owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain the manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to the owner all profits derived from and all damages suffered by reason of the wrongful manufacture, use, display, or sale. The court may also order that any counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court or to the complainant to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times the profits and damages and reasonable attorney fees of the prevailing party in cases in which the court finds that the other party committed the wrongful acts with knowledge, in bad faith, or otherwise as according to the circumstances of the case.

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state.

**History: En. Sec. 16, Ch. 429, L. 1979; amd. Sec. 14, Ch. 257, L. 2003.**

**30-13-336. Common-law rights.** Nothing in this part adversely affects the rights or the enforcement of rights in marks acquired at common law in good faith at any time.

**History: En. Sec. 17, Ch. 429, L. 1979.**

**Cross-References**

Common-law applicability, 1-1-108.

**30-13-337. Forum for actions regarding registration — service on out-of-state registrants.** (1) Actions to require cancellation of a mark registered pursuant to this part or in mandamus to compel registration of a mark pursuant to this part must be brought in district court. In an action in mandamus, the proceeding must be based solely upon the record before the secretary of state. In an action for cancellation, the secretary of state may not be made a party to the proceeding but must be notified of the filing of the complaint by the clerk of the court in which the action is filed and must be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary of state as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s) of the Montana Rules of Civil Procedure.

**History: En. Sec. 15, Ch. 257, L. 2003.**

**30-13-338. Trademark counterfeiting — presumption — penalties — restitution — forfeiture.** (1) (a) A person commits the offense of trademark counterfeiting if the person knowingly manufactures, distributes, transports, offers for sale, sells, or possesses with intent to sell or distribute any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services bearing a counterfeit mark.

(b) A person having possession, custody, or control of more than 25 items of goods, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature bearing a counterfeit mark must be presumed to possess the items with intent to offer for sale, sell, or distribute the items.

(2) (a) A person convicted of the offense of trademark counterfeiting shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offense involves less than 100 items bearing one or more counterfeit marks or the total retail value is less than $1,000. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) If the offense involves 100 items or more bearing one or more counterfeit marks and the retail value is $1,000 or more, the person shall be fined an amount not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) When imposing sentence on a person convicted of a violation of this section, the court may order restitution as provided in 30-13-335 to any person harmed by the trademark counterfeiting.

(4) (a) Any items bearing a counterfeit mark and all personal property employed or used in connection with counterfeiting, including but not limited to any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, must be seized by law enforcement officials who have the opportunity to take possession of the items or personal property.

(b) All seized items and personal property referenced in this subsection (4) must be forfeited and may, upon request of the registrant, be released to the registrant for destruction or destroyed by an officer of the court as provided in 30-13-335 unless the registrant agrees to another disposition of the seized items or personal property.

**History: En. Sec. 2, Ch. 177, L. 2009; amd. Sec. 19, Ch. 19, L. 2011.**

**30-13-339 and 30-13-340 reserved.**

**30-13-341. Repealed.** Sec. 16, Ch. 257, L. 2003.

**History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 4, Ch. 290, L. 1997.**

**30-13-342. Political party central committee marks.** Only a city, county, or state central committee of a political party may register a mark on behalf of the central committee. The secretary of state may not accept an application identifying the mark of a city, county, or state central committee of a political party unless it is accompanied by a resolution of the relevant central committee attesting that it is the entity applying for the mark.

**History: En. Sec. 5, Ch. 198, L. 2019.**

# CHAPTER 14
# UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

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**Chapter Cross-References**

Protection of consumers from unfair practices of corporations, Art. XIII, sec. 1, Mont. Const.
Plain Language in Contracts Act, Title 30, ch. 14, part 11.
Preventing financial exploitation, Title 32, ch. 1, part 15.
New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

## Part 1
## Consumer Protection Act

**Part Cross-References**

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.
Policy of Montana Alcoholic Beverage Code, 16-1-101.
Policy of The Montana Cigarette Sales Act, 16-10-102.
Violation of consumer reporting agencies' law as violation of part, 31-3-153.
Montana Consumer Product Safety Act of 1975, Title 50, ch. 30.

**30-14-101. Short title.** This part shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973".

**History:** **En. Sec. 19, Ch. 275, L. 1973; R.C.M. 1947, 85-418.**

**30-14-102. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not include:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card;

(iii) a gift certificate usable with multiple sellers of goods or services; or

(iv) any method of payment relating to electronic devices or other technology-based devices for service of beer and wine under 16-3-311.

(6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(7) "Possessor" means a natural person who has physical control over a gift certificate or travel credit.

(8) (a) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state.

(b) The terms include direct patient care agreements established pursuant to 50-4-107.

(9) "Travel credit" means a form of credit issued by an airline that can be used to purchase future flights or other services offered by an airline.

**History: En. Sec. 1, Ch. 275, L. 1973; R.C.M. 1947, 85-401; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 66, Ch. 483, L. 2001; amd. Sec. 1, Ch. 322, L. 2003; amd. Sec. 1, Ch. 280, L. 2005; amd. Sec. 2, Ch. 291, L. 2005; amd. Sec. 1, Ch. 331, L. 2007; amd. Sec. 5, Ch. 262, L. 2021; amd. Sec. 2, Ch. 231, L. 2025; amd. Sec. 8, Ch. 625, L. 2025.**

**Compiler's Comments**

*2025 Amendments — Composite Section:* See 2025 Session Law for amendment made by sec. 2, Ch. 231, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 625, L. 2025. Amendment effective May 13, 2025.

*Retroactive Applicability:* Section 19, Ch. 625, L. 2025, provided that this section applies retroactively, within the meaning of 1-2-109, to travel credit issued on or after January 1, 2025.

**30-14-103. Unlawful practices.** Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

**History: En. Sec. 2, Ch. 275, L. 1973; R.C.M. 1947, 85-402.**

**Cross-References**

Violation of consumer reporting agencies' law as violation of part, 31-3-153.
Deceptive practices, 45-6-317.
Deceptive business practices, 45-6-318.
Chain distributor schemes, 45-6-319.
Illegal branding or altering or obscuring of brand, 45-6-327.

**30-14-104. Federal interpretation — rules determining unfair competition and deception.** (1) It is the intent of the legislature that in construing 30-14-103 due consideration and weight must be given to the interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(2) The department may make rules interpreting the provisions of 30-14-103. The rules may not be inconsistent with the rules, regulations, and decisions of the federal trade

commission and the federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

(3) The provisions of 30-14-103 include but are not limited to an act or practice of providing consumer reviews or testimonials that are false, misleading, or otherwise unfair or deceptive in violation of 16 CFR, part 465.

**History: En. Sec. 3, Ch. 275, L. 1973; R.C.M. 1947, 85-403; amd. Sec. 1, Ch. 199, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 199, L. 2025. Amendment effective April 17, 2025.

**30-14-105. Exemptions.** This part does not apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission or the state auditor; or

(2) acts of a retail merchant, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement when the merchant, publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement.

**History: En. Sec. 4, Ch. 275, L. 1973; R.C.M. 1947, 85-404; amd. Sec. 2, Ch. 322, L. 2003.**

**30-14-106 and 30-14-107 reserved.**

**30-14-108. Termination of gift certificate prohibited — fee limitation — redemption — posting required.** (1) A gift certificate is valid until redemption and does not terminate. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate.

(2) The value represented by the gift certificate belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a gift certificate presented by an individual whose name does not match the name on the gift certificate.

(3) A gift certificate may not be reduced in value by any fee, including a dormancy fee applied if a certificate is not used.

(4) If the original value of the gift certificate was more than $5 and the remaining value is less than $5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the gift certificate for cash.

**History: En. Sec. 1, Ch. 291, L. 2005.**

**30-14-109. Termination of travel credit prohibited — fee limitation — redemption.** (1) A travel credit is valid until redemption and does not terminate. A travel credit is considered trust property of the possessor if the issuer or seller of the travel credit declares bankruptcy after issuing or selling the travel credit.

(2) The value represented by the travel credit belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a travel credit presented by an individual whose name does not match the name on the travel credit.

(3) A travel credit may not be reduced in value by any fee, including a dormancy fee applied if a travel credit is not used.

(4) If the original value of the travel credit was more than $5 and the remaining value is less than $5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the travel credit for cash.

**History: En. Sec. 2, Ch. 625, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 18, Ch. 625, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

*Retroactive Applicability:* Section 19, Ch. 625, L. 2025, provided that this section applies retroactively, within the meaning of 1-2-109, to travel credit issued on or after January 1, 2025.

**30-14-110 reserved.**

**30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to that person. The department may bring an action within 5 years on discovery of the method, act, or practice that is declared unlawful by 30-14-103.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court is authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond.

**History: En. Sec. 5, Ch. 275, L. 1973; R.C.M. 1947, 85-405; amd. Sec. 1, Ch. 394, L. 1979; amd. Sec. 3, Ch. 322, L. 2003; amd. Sec. 10, Ch. 535, L. 2021; amd. Sec. 2, Ch. 199, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 199, L. 2025. Amendment effective April 17, 2025.

**Cross-References**

Enforcement by Department, 30-14-220.

**30-14-112. Assurance of compliance.** In the administration of this part, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice considered to be in violation of this part from any person who has engaged or was about to engage in any method, act, or practice. Any assurance must be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has a principal place of business or the district court of Lewis and Clark County. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 30-14-111.

**History: En. Sec. 9, Ch. 275, L. 1973; amd. Sec. 10, Ch. 265, L. 1977; R.C.M. 1947, 85-409; amd. Sec. 954, Ch. 56, L. 2009.**

**30-14-113. Investigative demand.** (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this part, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation an investigative demand. The demand requires the person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which the person has knowledge or to appear and testify or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court of the county in which the person served with the demand resides or has a principal place of business or in the district court of Lewis and Clark County.

**History: En. Sec. 10, Ch. 275, L. 1973; amd. Sec. 11, Ch. 265, L. 1977; R.C.M. 1947, 85-410; amd. Sec. 955, Ch. 56, L. 2009.**

**Cross-References**

Investigations, 30-14-221.

**30-14-114. Department authority.** To accomplish the objectives and to carry out the duties prescribed by this part, the department, in addition to other powers conferred upon it by this part, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms, and adopt rules as may be necessary that have the force of law. However, the powers conferred by this part may not be used for the purpose of compelling any natural person to furnish testimony or evidence that might tend to incriminate the person or subject the person to a penalty or forfeiture. Information obtained pursuant to the powers conferred by this part may not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

**History:** **En. Sec. 11, Ch. 275, L. 1973; R.C.M. 1947, 85-411; amd. Sec. 956, Ch. 56, L. 2009.**

**Cross-References**

Investigations, 30-14-221.

**30-14-115. Service of process — how made.** Service of any notice, demand, or subpoena under this part shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

**History:** **En. Sec. 12, Ch. 275, L. 1973; R.C.M. 1947, 85-412.**

**30-14-116 through 30-14-120 reserved.**

**30-14-121. Duties of county attorney.** It is the duty of the county attorney to lend to the department the assistance that the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney, on request of the department or another county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone, the county attorney shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney shall report on the action to the department within 30 days of the final disposition of the matter.

**History:** **En. Sec. 16, Ch. 275, L. 1973; amd. Sec. 1, Ch. 407, L. 1977; R.C.M. 1947, 85-416; amd. Sec. 2, Ch. 280, L. 2005.**

**30-14-122. Employment of investigator by county attorney.** The county attorney in counties having a taxable valuation of $30 million or more may designate an employee to act as a full-time investigator.

**History:** **En. Sec. 17, Ch. 275, L. 1973; R.C.M. 1947, 85-417; amd. Sec. 29, Ch. 128, L. 2011.**

**30-14-123 through 30-14-130 reserved.**

**30-14-131. Restoration — court orders.** (1) The court may enter orders or judgments necessary to restore to a person any money or property, real or personal, that may have been acquired by means of any practice in this part declared to be unlawful. The court may order the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state, or both.

(2) The court shall award reasonable attorney fees to the prevailing party for bringing a successful action under this part.

(3) The court may enter any other order or judgment required by equity to carry out the provisions of this part.

**History:** **En. Sec. 6, Ch. 275, L. 1973; R.C.M. 1947, 85-406; amd. Sec. 4, Ch. 322, L. 2003; amd. Sec. 3, Ch. 280, L. 2005.**

**30-14-132. Powers of receiver — proof of damages — jurisdiction.** (1) When a receiver is appointed by the court pursuant to this part, the receiver has the power to sue for, collect, receive, and take into possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which the property has been mingled if it cannot be identified in kind because of the commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds of the property under the direction of the court.

(2) Any person who has suffered damages as a result of the use or employment of any unlawful practice and submits proof to the satisfaction of the court that the person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

**History: En. Sec. 7, Ch. 275, L. 1973; amd. Sec. 8, Ch. 265, L. 1977; R.C.M. 1947, 85-407; amd. Sec. 957, Ch. 56, L. 2009.**

**30-14-133. Damages — limitation on residential construction disputes — notice to public agencies — attorney fees — prior judgment as evidence.** (1) (a) Except as provided in subsection (1)(b), a consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual action but not a class action under the rules of civil procedure in the district court of the county in which the seller, lessor, or service provider resides or has its principal place of business or is doing business to recover money damages in the amount of any ascertainable loss of money or property or $500, whichever is greater. An individual claim may be brought in justice's court. A consumer may bring an individual action under this section within the timeframe described in 27-2-211. The court may not award punitive damages but may, in its discretion, award up to three times the money damages in the amount of any ascertainable loss of money or property sustained, if actual damages do not exceed $100,000, and may provide any other equitable relief that it considers necessary or proper.

(b) A consumer may not bring or maintain an action under this section if the consumer is bringing an action subject to 70-19-427 or 70-19-428 against a construction professional.

(2) Upon commencement of any action brought under subsection (1), the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of the judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action, except that attorney fees may not be awarded if the consumer recovers actual damages of $100,000 or more. Attorney fees are limited to no more than $250 an hour. A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion.

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 is prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103.

**History: En. Sec. 8, Ch. 275, L. 1973; amd. Sec. 9, Ch. 265, L. 1977; R.C.M. 1947, 85-408; amd. Sec. 5, Ch. 322, L. 2003; amd. Sec. 1, Ch. 46, L. 2021; amd. Sec. 1, Ch. 521, L. 2021; amd. Sec. 3, Ch. 199, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 199, L. 2025. Amendment effective April 17, 2025.

**30-14-134. Enforcement of department orders — contempt.** If any person fails or refuses to file any statement or report or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state; revoking or suspending the certificate of authority to do business in this state of a foreign corporation; or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required until the person files the statement or report or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

**History: En. Sec. 13, Ch. 275, L. 1973; R.C.M. 1947, 85-413.**

**30-14-135. Statute of limitations.** Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

**History: En. Sec. 13, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-14-136 through 30-14-140 reserved.**

**30-14-141. Dissolution or forfeiture of corporate franchise.** Upon petition by the department, the district court may, in its discretion, order the dissolution, suspension, or forfeiture of franchise of any corporation which violates the terms of any injunction issued under 30-14-111.

**History: En. Sec. 15, Ch. 275, L. 1973; R.C.M. 1947, 85-415.**

**30-14-142. Penalties.** (1) In addition to any fine that a person might be subject to under subsection (2), a person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than $10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases, the department, acting in the name of the state, may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than $10,000 for each violation. The fine provided for in this subsection is in addition to any liability that a person might be subject to under subsection (1).

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined an amount not more than $5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. This subsection does not limit any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103.

**History: En. Sec. 14, Ch. 275, L. 1973; R.C.M. 1947, 85-414; amd. Sec. 8, Ch. 137, L. 1979; amd. Sec. 2, Ch. 394, L. 1979; amd. Sec. 15, Ch. 342, L. 1999; amd. Sec. 6, Ch. 322, L. 2003.**

**Cross-References**

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

**30-14-143. Disposition of civil fines, settlement proceeds, amounts awarded in judgments, costs, and fees.** (1) (a) Except as provided in subsection (1)(c), all civil fines, settlement proceeds not otherwise designated for a specific use pursuant to court order, amounts awarded in judgments, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part.

(b) At the end of each biennium, the balance in the state special revenue account may not exceed three times the amount of the budget appropriated to the department to discharge its powers and duties under this part for that biennium. Funds that are otherwise obligated to implement the provisions of the settlement agreement are not considered part of the balance of the state special revenue account. Any excess civil fines, settlement proceeds not otherwise designated for a specific use pursuant to court order, amounts awarded in judgment, costs, or fees must be transferred to the general fund no later than the first business day in January of the subsequent biennium.

(c) All civil fines received or recovered by the department pursuant to 30-14-144 must be deposited in the general fund.

(2) All civil fines, settlement proceeds, amounts awarded in judgments, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county in which the action was commenced.

**History: En. Sec. 1, Ch. 136, L. 2003; amd. Sec. 4, Ch. 280, L. 2005; amd. Sec. 2, Ch. 217, L. 2013; amd. Sec. 1, Ch. 256, L. 2021.**

**30-14-144. Additional penalty for unfair or deceptive act committed against vulnerable adult.** (1) In addition to any civil penalty imposed pursuant to 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated against a vulnerable adult is liable for an additional civil penalty not to exceed $10,000 for each violation if the court finds that:

(a) the person knew or should have known that the person's conduct was directed toward one or more vulnerable adults; or

(b) the person's conduct caused a vulnerable adult to suffer one of the following:

(i) loss or encumbrance of a primary residence;

(ii) loss of principal employment or other source of income;

(iii) substantial loss of property set aside for retirement or for personal or family care and maintenance;

(iv) substantial loss of payments received under a pension or retirement plan or a government benefits program; or

(v) loss of assets essential to the health or welfare of the vulnerable adult.

(2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil penalties ordered by the court under this section.

(3) As used in this section, "vulnerable adult" has the meaning provided in 52-3-803.

**History: En. Sec. 1, Ch. 217, L. 2013; amd. Sec. 1, Ch. 12, L. 2023.**

**30-14-145 through 30-14-150 reserved.**

**30-14-151. Renumbered 30-14-2201.** Code Commissioner, 2017.

**30-14-152. Renumbered 30-14-2202.** Code Commissioner, 2017.

**30-14-153. Renumbered 30-14-2203.** Code Commissioner, 2017.

**30-14-154. Renumbered 30-14-2204.** Code Commissioner, 2017.

**30-14-155. Renumbered 30-14-2205.** Code Commissioner, 2017.

**30-14-156. Renumbered 30-14-2206.** Code Commissioner, 2017.

**30-14-157. Renumbered 30-14-2207.** Code Commissioner, 2017.

**30-14-158.** *(Temporary)* **Prohibition against tiktok — penalty — enforcement — definitions.** (1) Tiktok may not operate within the territorial jurisdiction of Montana. An entity violates this prohibition when any of the following occurs within the territorial jurisdiction of Montana:

(a) the operation of tiktok by the company or users; or

(b) the option to download the tiktok mobile application by a mobile application store.

(2) An entity that violates a provision of this section is liable in the amount of $10,000 for each discrete violation and is liable for an additional $10,000 each day thereafter that the violation continues.

(3) It is an affirmative defense to this section if the violating entity could not have reasonably known that the violation occurred within the territorial jurisdiction of Montana.

(4) Penalties under this section do not apply to law enforcement activities, national security interests and activities, security research activities, or essential government uses permitted by the governor on the information technology system of the state.

(5) Penalties in this section do not apply to users of tiktok.

(6) The department of justice shall enforce the provisions of this section.

(7) As used in this section, the following definitions apply:

(a) "Discrete violation" means each time that a user accesses tiktok, is offered the ability to access tiktok, or is offered the ability to download tiktok.

(b) "Entity" means a mobile application store or tiktok.

(c) "Mobile application" means a type of software program designed to run on a mobile device.

(d) "Territorial jurisdiction" means all places subject to the criminal jurisdiction of Montana.

(e) "Tiktok" means the social networking service owned by the Chinese company bytedance limited or any successors. *(Void on occurrence of contingency—sec. 4, Ch. 503, L. 2023.)*

**History: En. Sec. 1, Ch. 503, L. 2023.**

**Compiler's Comments**

*Contingent Voidness:* Section 4, Ch. 503, L. 2023, provided: "[This act] is void if tiktok is acquired by or sold to a company that is not incorporated in any other country designated as a foreign adversary in 15 C.F.R. 7.4 at the time tiktok is sold or acquired."

**30-14-159. Publishing and distribution of material harmful to minors — age verification — requirements — penalties — exceptions — reporting — definitions.** (1) A commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the internet from a website that contains a substantial portion of the material must be held liable if the entity fails to perform reasonable age verification methods to verify the age of individuals attempting to access the material.

(2) A commercial entity or third party that performs the required age verification may not retain any identifying information of the individual after access has been granted to the material.

(3) (a) A commercial entity that is found to have violated this section is liable to an individual for damages resulting from a minor accessing the material, including court costs and reasonable attorney fees as ordered by the court.

(b) A commercial entity that is found to have knowingly retained identifying information of the individual after access has been granted to the individual must be liable to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney fees as ordered by the court.

(4) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of any news-gathering organizations.

(5) An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be held to have violated the provisions of this section solely for providing access or connection to or from a website or other information or content on the internet or a facility, system, or network not under that provider's control, including transmission, downloading, intermediate storage, access software, or other forms of access or storage to the extent the provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

(6) This section may only be enforced by individuals claiming damages pursuant to subsection (3).

(7) For the purposes of this section:

(a) "Commercial entity" includes corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(b) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(c) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(d) "Material harmful to minors" is defined as all of the following:

(i) any material that the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(ii) any of the following material that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with respect to minors:

(A) pubic hair, anus, vulva, genitals, or nipple of the female breast;

(B) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(C) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(iii) the material taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

(e) "Minor" means any person under 18 years of age.

(f) "News-gathering organization" means any of the following:

(i) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection (7)(f)(i), who can provide documentation of employment with the newspaper, news publication, or news source; and

(ii) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service, while operating as an employee as provided in this subsection (7)(f)(ii), who can provide documentation of employment.

(g) "Publish" means to communicate or make information available to another person or entity on a publicly available internet website.

(h) "Reasonable age verification methods" include verifying that the person seeking to access the material is 18 years of age or older by using any of the following methods:

(i) providing a digitized identification card; or

(ii) requiring the person attempting to access the material to comply with a commercial age verification system that verifies in one or more of the following ways:

(A) government-issued identification; or

(B) any commercially reasonable method that relies on public or private transactional data to verify the age of the person attempting to access the information is at least 18 years of age or older.

(i) "Substantial portion" means more than 33⅓% of total material on a website, which meets the definition of "material harmful to minors" as defined by this section.

(j) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. Transactional data may include but is not limited to records from mortgage, education, and employment entities.

**History:** **En. Sec. 1, Ch. 700, L. 2023; amd. Sec. 4, Ch. 199, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 199, L. 2025. Amendment effective April 17, 2025.

**30-14-160. Firearms code.** (1) (a) A financial institution may not require a firearms retailer in this state to use a firearms code that is different from that of a general transaction.

(b) It is the intent of this section to prohibit a financial institution from mandating firearms retailers to adopt a firearms code that is separate from a general merchandise retailer or sporting goods retailer.

(2) A violation of this section constitutes an unfair trade practice subject to the provisions of Title 30, chapter 14, and with exclusive enforcement authority by the department.

(3) For the purposes of this section, the following definitions apply:

(a) "Financial institution" means a:

(i) bank or trust company;

(ii) mutual savings and loan association;

(iii) credit union;

(iv) payment card network;

(v) online payment provider;

(vi) cryptocurrency company;

(vii) internet-based payment application;

(viii) acquirer;

(ix) payment facilitator; or

(x) similar company or institution providing financial transaction services.

(b) "Firearms code" means the merchant category code approved by the international organization for standardization for the purposes of initiating a card-based transaction for firearms retailers.

(c) "Firearms retailer" means any person or entity engaged in the lawful business of selling or trading any of the following items that are physically located in this state:

(i) firearms;

(ii) firearms parts or components;

(iii) firearms accessories;

(iv) ammunition;

(v) ammunition components, including but not limited to powder or casings; or

(vi) other products offered and sold at firearms stores.

**History:** **En. Sec. 1, Ch. 677, L. 2023.**

**30-14-161 through 30-14-164 reserved.**

**30-14-165. Definitions.** As used in 30-14-165 and 30-14-166, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Solar buyer" means a person or entity who purchases or considers to purchase a solar energy system located on a residential property that is owned or leased.

(2) "Solar energy system" means an assembly of equipment and components that has the primary purpose of converting sunlight into electricity by photovoltaic effect for a resident's use for personal, family, or household purposes. The term includes battery storage.

(3) "Solar sales agent" means a person or entity that solicits, offers, negotiates, sells, or executes contracts via door-to-door sales to sell a solar energy system at the direction of, or on behalf of, a solar company.

**History:** **En. Sec. 1, Ch. 719, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 719, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

**30-14-166. Solar buyer's right to cancel — prohibition of deceptive statements.** (1) A solar sales agent shall provide a customer with an explanation of the customer's recission rights written in all capital letters that includes space for the customer to initial a written acknowledgment of having read and understood the explanation that reads as follows:

"YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT WITHIN 3 BUSINESS DAYS AFTER YOU SIGN THIS CONTRACT. TO CANCEL, YOU MUST NOTIFY IN WRITING THE PERSON IDENTIFIED FOR THIS PURPOSE IN THIS CONTRACT BY E-MAIL OR BY CERTIFIED POSTAL MAIL".

(2) (a) If a solar buyer rescinds an installation contract with a solar company or a solar sales agent representing a solar company within 3 business days following the date on which the solar buyer signed an agreement to purchase and provides their cancellation notice in writing to the solar company or the solar sales agent representing a solar company, the contract is terminated.

(b) A solar company or a solar sales agent representing a solar company may not enforce any terms of the rescinded contract and may not file any claims for labor and materials.

(3) A solar company or a solar sales agent representing a solar company may not conduct solicitations using any deceptive statement concerning the costs, financing, and terms and conditions of the purchase or installation of a solar energy system.

**History:** **En. Sec. 2, Ch. 719, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 719, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

## Part 2
## Unfair Trade Practices Generally

**Part Cross-References**

Insurance — unfair trade practices, Title 33, ch. 18.

**30-14-201. Purpose.** The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part must be liberally construed so that its beneficial purposes may be accomplished.

**History:** **En. Sec. 14, Ch. 80, L. 1937; Sec. 51-117, R.C.M. 1947; amd. and redes. 51-501 by Sec. 1, Ch. 518, L. 1977; R.C.M. 1947, 51-501; amd. Sec. 5, Ch. 280, L. 2005.**

**30-14-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include a product or service of a public utility.

(2) "Business" includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes but is not limited to the following items of expense:

(a) labor (including salaries of executives and officers);
(b) rent;
(c) interest on borrowed capital;
(d) depreciation;
(e) selling cost;
(f) maintenance of equipment;
(g) delivery costs;
(h) credit losses;
(i) all types of licenses;
(j) taxes;
(k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of justice provided for in 2-15-2001.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

**History: En. 51-502 by Sec. 2, Ch. 518, L. 1977; R.C.M. 1947, 51-502; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 67, Ch. 483, L. 2001; amd. Sec. 6, Ch. 280, L. 2005.**

**30-14-203. Persons responsible.** Any person who, either as director, officer, or agent of any business or as agent of any person, assists or aids, directly or indirectly, in a violation of this part is responsible for the violation equally with the person or business for whom or for which the person acts.

**History: En. Sec. 2, Ch. 80, L. 1937; Sec. 51-102, R.C.M. 1947; amd. and redes. 51-503 by Sec. 3, Ch. 518, L. 1977; R.C.M. 1947, 51-503; amd. Sec. 135, Ch. 575, L. 1981; amd. Sec. 958, Ch. 56, L. 2009.**

**Cross-References**

Accountability for conduct of corporation, 45-2-312.

**30-14-204. Proof of intent.** In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or business for whom or for which the person acts.

**History: En. 51-504 by Sec. 4, Ch. 518, L. 1977; R.C.M. 1947, 51-504; amd. Sec. 136, Ch. 575, L. 1981; amd. Sec. 959, Ch. 56, L. 2009.**

**Cross-References**

Terms denoting state of mind, 1-1-204.
Definitions and state of mind, 45-2-101.

**30-14-205. Unlawful restraint of trade.** It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:
(a) limit productions;
(b) increase or reduce the price of merchandise or commodities;
(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

**History: En. 51-505 by Sec. 5, Ch. 518, L. 1977; R.C.M. 1947, 51-505.**

**Cross-References**

Unlawful practices, 30-14-103.

**30-14-206. Labor excepted.** The provisions of 30-14-205 do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages.

**History: En. Sec. 2, Ch. 97, L. 1909; re-en. Sec. 10902, R.C.M. 1921; re-en. Sec. 10902, R.C.M. 1935; Sec. 94-1105, R.C.M. 1947; redes. 51-402 by Sec. 29, Ch. 513, L. 1973; amd. and redes. 51-506 by Sec. 6, Ch. 518, L. 1977; R.C.M. 1947, 51-506.**

**30-14-207. Unfair competition in sales.** (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

**History: En. 51-507 by Sec. 7, Ch. 518, L. 1977; R.C.M. 1947, 51-507.**

**Cross-References**

Sales below cost — evidence of unlawful intent, 16-10-301.

Sale defined, 30-11-101.

Unlawful practices, 30-14-103.

**30-14-208. Unfair competition in purchasing.** (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer, discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair discrimination provided such higher rate or price is

paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

**History: En. 51-508 by Sec. 8, Ch. 518, L. 1977; R.C.M. 1947, 51-508.**

**30-14-209. Sales at less than cost forbidden.** It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

**History: En. 51-509 by Sec. 9, Ch. 518, L. 1977; R.C.M. 1947, 51-509.**

**Cross-References**

Unlawful practices, 30-14-103.

**30-14-210. Cost survey as evidence of cost.** Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

**History: En. 51-510 by Sec. 10, Ch. 518, L. 1977; R.C.M. 1947, 51-510.**

**30-14-211. Establishing cost survey.** (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing the cost survey. The hearing must be held at the office of the department and upon notice that the department may require by rule. However, notice of the hearing must be published for at least 2 successive weeks in the daily newspaper or newspapers designated by the department as the most commonly circulated in the counties affected by the cost survey. The notice must further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by the department as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts of a particular trade or business, to be affected, determine the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost that would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost that would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined must be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey.

**History: En. Sec. 12A, Ch. 80, L. 1937, added by Sec. 2, Ch. 50, L. 1939; amd. Sec. 1, Ch. 21, L. 1945; amd. Sec. 2, Ch. 129, L. 1949; amd. Sec. 122, Ch. 431, L. 1975; Sec. 51-114, R.C.M. 1947; amd. and redes. 51-511 by Sec. 11, Ch. 518, L. 1977; R.C.M. 1947, 51-511; amd. Sec. 7, Ch. 322, L. 2003.**

**Cross-References**

Department authority, 30-14-114.

**30-14-212. Forced sales not basis of cost price.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of sale of the article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, or closeout sale or by means other than through the ordinary channels of trade and

such advertising states the conditions under which the goods were purchased and the quantity of merchandise to be sold or offered for sale.

**History: En. Sec. 4, Ch. 80, L. 1937; Sec. 51-104, R.C.M. 1947; amd. and redes. 51-512 by Sec. 12, Ch. 518, L. 1977; R.C.M. 1947, 51-512.**

**30-14-213. Sales excepted.** Sections 30-14-209, 30-14-210, and 30-14-212 do not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part of the stock for the purpose of discontinuing the owner's trade in any article of commerce;

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article of commerce in the same locality or trade area; or

(7) to the state of Montana or any of its institutions.

**History: En. Sec. 6, Ch. 80, L. 1937; amd. Sec. 1, Ch. 100, L. 1941; Sec. 51-107, R.C.M. 1947; amd. and redes. 51-513 by Sec. 13, Ch. 518, L. 1977; R.C.M. 1947, 51-513; amd. Sec. 960, Ch. 56, L. 2009.**

**30-14-214. Fair price for agricultural products.** (1) The following method shall be used in determining fair prices for agricultural products sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of the producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this part.

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. An organization representing consumers may not be denied representation at the hearing.

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this part for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. Such action is punishable under the terms provided in this part.

**History: En. Sec. 5-A, Ch. 80, L. 1937; amd. Sec. 120, Ch. 431, L. 1975; Sec. 51-106, R.C.M. 1947; amd. and redes. 51-514 by Sec. 14, Ch. 518, L. 1977; R.C.M. 1947, 51-514.**

**30-14-215. Repealed.** Sec. 17, Ch. 322, L. 2003.

**History: En. Sec. 7, Ch. 80, L. 1937; Sec. 51-108, R.C.M. 1947; amd. and redes. 51-515 by Sec. 15, Ch. 518, L. 1977; R.C.M. 1947, 51-515.**

**30-14-216. Pooling of grain prohibited.** (1) It is unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into a contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station or with its agent whereby:

(a) the amount of grain to be received or handled by the warehouses at such station is to be equalized or pooled between the warehouses;

(b) the profits or earnings derived from the warehouses are to be divided, pooled, or apportioned in any manner; or

(c) the price to be paid for any kind of grain at such station is to be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding constitutes a separate offense.

**History: En. Sec. 1, Ch. 69, L. 1915; re-en. Sec. 10912, R.C.M. 1921; Sec. 94-1115, R.C.M. 1947; redes. 51-411 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10912, R.C.M. 1935; amd. and redes. 51-516 by Sec. 16, Ch. 518, L. 1977; R.C.M. 1947, 51-516.**

**Cross-References**

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

**30-14-217. Destruction of food.** It is unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other product or article which is customary or proper food for human beings and is in fit sanitary condition to be used as such.

**History: En. Sec. 1, Ch. 16, L. 1919; re-en. Sec. 10914, R.C.M. 1921; Sec. 94-1117, R.C.M. 1947; redes. 51-413 by Sec. 29, Ch. 513, L. 1973; re-en. Sec. 10914 R.C.M.; amd. and redes. 51-517, by Sec. 17, Ch. 518, L. 1977; R.C.M. 1947, 51-517.**

**Cross-References**

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, part 2.

**30-14-218. Alteration of invoices prohibited.** It is unlawful for a person to change, alter, substitute, or falsify an invoice if the practice tends to injure a competitor, destroy competition, or mislead a court or the department. Such practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in 30-14-224.

**History: En. Sec. 4, Ch. 50, L. 1939; amd. Sec. 124, Ch. 431, L. 1975; Sec. 51-116, R.C.M. 1947; amd. and redes. 51-518 by Sec. 18, Ch. 518, L. 1977; R.C.M. 1947, 51-518.**

**Cross-References**

Alteration — negotiable instruments, 30-3-407.
Altered warehouse receipts, 30-7-208.
Altered bills of lading, 30-7-306.
Unlawful practices, 30-14-103.

**30-14-219. Recovery on illegal contracts forbidden.** A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 is an illegal contract upon which a recovery may not be had.

**History: En. Sec. 9, Ch. 80, L. 1937; Sec. 51-110, R.C.M. 1947; amd. and redes. 51-522 by Sec. 22, Ch. 518, L. 1977; R.C.M. 1947, 51-522; amd. Sec. 8, Ch. 322, L. 2003.**

**Cross-References**

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

**30-14-220. Enforcement by department.** (1) The department may prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department may make its own investigation.

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part or if it appears to the department that a proceeding by the department would be in the interest of the public, the department may issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, the location of the hearing, and the date of the hearing, which may not be less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department at any time 5 days prior to the issuance of an order based on the complaint.

(c) A person who is the subject of a complaint may appear at the hearing and show cause why an order should not be entered by the department requiring the person to stop the violation of the law charged in the complaint.

(d) Any person may apply and upon showing good cause be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding must be reduced to writing and filed with the department.

(f) If upon the conclusion of the hearing the department determines that the act or conduct in question is prohibited by this part, the department shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring the person to stop the act or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner the department considers proper, modify or set aside, in whole or in part, a report or an order made or issued by the department under this section.

(4) A court reviewing an order of the department may issue writs that are ancillary to the court's jurisdiction or that are necessary to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall issue an order requiring compliance with the terms of the order of the department.

(6) Proceedings under this section must be given precedence over other civil cases pending in the district court and must be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the department a penalty of not more than $10,000 for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part.

**History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967; amd. Sec. 121, Ch. 431, L. 1975; Sec. 51-113, R.C.M. 1947; amd. and redes. 51-519 by Sec. 19, Ch. 518, L. 1977; R.C.M. 1947, 51-519; amd. Sec. 9, Ch. 322, L. 2003; amd. Sec. 7, Ch. 280, L. 2005.**

**Cross-References**

Department to restrain unlawful acts, 30-14-111.
Department authority, 30-14-114.
Enforcement of Department orders — contempt, 30-14-134.

**30-14-221. Investigations.** (1) The department, for the purpose of conducting hearings and investigations that in the opinion of the department are necessary and proper for the exercise of the powers vested in the department by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy the evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring the person to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, compelled testimony or evidence or any information directly or indirectly derived from testimony or evidence may not be used against the witness in any criminal prosecution. This section does not prohibit the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the department determines, in its sole discretion, that the ends of justice would be served by granting immunity. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

**History: En. Sec. 3, Ch. 50, L. 1939; amd. Sec. 123, Ch. 431, L. 1975; Sec. 51-115, R.C.M. 1947; amd. and redes. 51-520 by Sec. 20, Ch. 518, L. 1977; R.C.M. 1947, 51-520; amd. Sec. 2, Ch. 577, L. 1983; amd. Sec. 2, Ch. 101, L. 1985; amd. Sec. 961, Ch. 56, L. 2009.**

**Cross-References**

Investigative demand, 30-14-113.
Perjury, 45-7-201.

**30-14-222. Injunctions — damages — production of evidence.** (1) A person who is or will be injured or the department may bring an action to enjoin an act that is in violation of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 and for the recovery of damages. If the court finds that the defendant is violating or has violated any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218, the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(2) (a) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the greater of three times the amount of actual damages sustained or $1,000.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to $500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, or 30-14-224.

(4) In an action brought by a party other than the department, the prevailing party is entitled to attorney fees and costs.

**History: En. Sec. 10, Ch. 80, L. 1937; Sec. 51-111, R.C.M. 1947; amd. and redes. 51-521 by Sec. 21, Ch. 518, L. 1977; R.C.M. 1947, 51-521; amd. Sec. 10, Ch. 322, L. 2003; amd. Sec. 41, Ch. 130, L. 2005; amd. Sec. 8, Ch. 280, L. 2005.**

**30-14-223. Department's institution of suit.** Upon the violation of any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218 by any business, the department may institute a proceeding in a court of competent jurisdiction for the forfeiture of the business's charter, rights, franchises or privileges, and powers exercised by the business and to permanently enjoin it from transacting business in this state. If in the proceeding the court finds that the business is violating or has violated any of the provisions of 30-14-205 through 30-14-214 or 30-14-216 through 30-14-218, the court shall enjoin the business from doing business in this state permanently or for a period of time that the court orders or the court shall annul the charter or revoke the franchise of the business.

**History: En. Sec. 8, Ch. 80, L. 1937; Sec. 51-109, R.C.M. 1947; amd. and redes. 51-523 by Sec. 23, Ch. 518, L. 1977; R.C.M. 1947, 51-523; amd. Sec. 137, Ch. 575, L. 1981; amd. Sec. 11, Ch. 322, L. 2003; amd. Sec. 42, Ch. 130, L. 2005.**

**30-14-224. Penalties.** (1) A person, whether as principal, agent, officer, or director, who purposely or knowingly violates any of the provisions of 30-14-207 through 30-14-214 or 30-14-216 through 30-14-218 is guilty of an offense for each violation and upon conviction may be fined an amount not more than $10,000 or imprisoned for a term not to exceed 2 years, or both.

(2) A violation of 30-14-205 is punishable by imprisonment for a period of not more than 5 years, and the offender may be subject to a fine in an amount not exceeding $25,000.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the convicted person. A new license may not be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with that person in that business for a period of 5 years.

**History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524; amd. Sec. 9, Ch. 137, L. 1979; amd. Sec. 12, Ch. 322, L. 2003.**

**30-14-225. Prohibited practices — advertising allowed — violations.** (1) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, may not manage, handle, or arrange automobile glass replacement or glass repair work for which the glass broker retains a percentage of the claim.

(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12.

**History:** **En. Sec. 4, Ch. 554, L. 1993; amd. Sec. 1, Ch. 207, L. 1997; amd. Sec. 1, Ch. 174, L. 1999; amd. Sec. 1, Ch. 526, L. 1999; amd. Sec. 1, Ch. 345, L. 2001.**

**Cross-References**

Automobile glass repair shops — provisions pertaining to insurance, 33-18-221 through 33-18-223.
Windshield tinting — restrictions, 61-9-405.

**30-14-226. Disposition of civil fines, settlement proceeds, amounts awarded in judgments, costs, and fees.** (1) All civil fines, settlement proceeds not otherwise designated for a specific use pursuant to court order, amounts awarded in judgments, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part.

(2) At the end of each biennium, the balance in the state special revenue account may not exceed three times the amount of the budget appropriated to the department to discharge its powers and duties under this part for that biennium. Funds that are otherwise obligated to implement the provisions of the settlement agreement are not considered part of the balance of the state special revenue account. Any excess civil fines, settlement proceeds not otherwise designated for a specific use pursuant to court order, amounts awarded in judgment, costs, or fees must be transferred to the general fund no later than the first business day in January of the subsequent biennium.

**History:** **En. Sec. 2, Ch. 136, L. 2003; amd. Sec. 9, Ch. 280, L. 2005; amd. Sec. 2, Ch. 256, L. 2021.**

**30-14-227. Transfer or sale of a franchise — continuance of contracts.** (1) Unless otherwise prohibited under a franchise agreement and in the event of a transfer between a franchisee and a third party, the franchisor may not unilaterally alter existing contracts between the franchisor and the franchisee and the transferee. A violation of this section constitutes an unfair trade practice subject to a $10,000 fine for each violation.

(2) This section does not apply to:

(a) motorsports dealer contracts under Title 30, chapter 14, part 25;

(b) new motor vehicle franchise agreements under Title 61, chapter 4; or

(c) farm implement dealership agreements under Title 30, chapter 11.

(3) For the purposes of this section, "franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

**History:** **En. Sec. 1, Ch. 224, L. 2021.**

**30-14-228. Acceptance of United States currency — retailers — government subdivision.** (1) (a) Except as provided in subsection (2), a retail establishment offering goods or services for sale must accept United States currency, including federal reserve notes, from a buyer to purchase the goods or services.

(b) The state or any political subdivision of the state shall accept United States currency, including federal reserve notes, from any member of the public.

(2) (a) This section applies to a retail establishment only if the establishment has an individual accepting payment in person for the goods and services being offered.

(b) This section does not apply to a retail transaction in which the retail establishment requires that:

(i) a security deposit be placed on a credit card; or

(ii) a credit card number be provided to cover unforeseen damages or expenses.

(c) This section does not apply to a retail establishment that uses a device to convert a consumer's cash into a prepaid card allowing the consumer to complete a transaction at the retail establishment if:

(i) the transaction does not include a fee;

(ii) the transaction does not require a minimum deposit greater than $1;

(iii) on request, the consumer is provided with a receipt indicating the amount of cash the consumer deposited in the prepaid card; and

(iv) the underlying money on the prepaid card is not subject to an expiration date and there is no limit on the number of transactions that may be completed using the prepaid card.

(d) This section does not apply to a bank or a credit union as defined in Title 32.

(e) A retail establishment with more than one point of sale at a single address complies with this section if it accepts United States currency, including federal reserve notes, at no fewer than one point of sale at the address.

(3) A person who fails to accept United States currency as required in subsection (1) must pay a maximum $100 fee per violation of this section, determined by the department of justice, to the department of justice for the administration of this section to continue to transact business.

**History: En. Sec. 1, Ch. 704, L. 2023.**

**30-14-229 and 30-14-230 reserved.**

**30-14-231. Statute of limitations.** Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

**History: En. Sec. 14, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

## Part 3
## Motion Picture Fair Trade Practices Act

**Part Cross-References**

Theater licenses, 7-21-2205.

Certain motion picture theater employees not liable for prosecution, 45-8-203.

Theaters — sanitary inspections, 50-1-203.

**30-14-301. Short title.** This part shall be known and may be cited as the "Motion Picture Fair Trade Practices Act".

**History: En. Sec. 1, Ch. 214, L. 1981.**

**30-14-302. Purpose.** The purposes of this part are to establish fair and open procedures for the licensing of motion pictures within the state; to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the state; to promote fair and effective competition in that business; and to benefit the moviegoing public by holding down admission prices to motion picture theaters, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by ensuring that exhibitors have the opportunity to view a picture before committing themselves to exhibit it.

**History: En. Sec. 2, Ch. 214, L. 1981.**

**Cross-References**

Deceptive practices, 45-6-317.

Deceptive business practices, 45-6-318.

Chain distributor schemes, 45-6-319.

**30-14-303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Blind bidding" means bidding, negotiating, offering terms, making an invitation to bid, or agreeing to terms for the purpose of entering into a license agreement prior to a trade screening of the motion picture that is the subject of the agreement.

(2) "Distributor" means any person engaged in the business of renting, selling, or licensing motion pictures to exhibitors.

(3) "Exhibitor" means any person engaged in the business of operating a theater in this state.

(4) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.

(5) "Market area" means either a city in Montana or a city in any of the 11 western states that prohibits blind bidding.

(6) "Theater" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

(7) "Trade screening" means the showing of a motion picture by a distributor in the market area. The showing must be open to any exhibitor interested in exhibiting the motion picture, and the exhibitor or the exhibitor's buying agency must be notified of the trade screening.

**History: En. Sec. 3, Ch. 214, L. 1981; amd. Sec. 962, Ch. 56, L. 2009.**

**30-14-304. Blind bidding prohibited.** No distributor or exhibitor may engage in blind bidding.

**History: En. Sec. 4, Ch. 214, L. 1981.**

**30-14-305. License agreements — unlawful provisions.** (1) It is unlawful for any license agreement that provides for a fee or other payment to the distributor based in whole or in part on the attendance or the box office receipts at a theater within the state to contain or be conditioned upon a guarantee of a minimum payment to the distributor.

(2) Any provision, agreement, or understanding entered into after October 1, 1981, that provides for such a guarantee is void, and any purported waiver of the prohibition in subsection (1) is void and unenforceable.

**History: En. Sec. 5, Ch. 214, L. 1981.**

**Cross-References**

When contract wholly void, 28-2-603.
When contract partially void, 28-2-604.
Contracts — what is unlawful, 28-2-701.
Contracts — what conditions void, 28-2-707.

**30-14-306. Bid requirements.** If bids are solicited from exhibitors for the purpose of entering into a license agreement, the invitation to bid shall include the date, time, and location of the trade screening of the motion picture that is the subject of the invitation to bid.

**History: En. Sec. 6, Ch. 214, L. 1981.**

**30-14-307. Void acts.** Any provision of an invitation to bid or a license agreement entered into after October 1, 1981, that waives any of the prohibitions of or fails to comply with this part is void and unenforceable.

**History: En. Sec. 7, Ch. 214, L. 1981.**

**Cross-References**

Contracts — what conditions void, 28-2-707.

**30-14-308. Violation a misdemeanor.** It is unlawful for any person to willfully violate any provision of this part. Any such violation constitutes a misdemeanor, and the violator shall be punished as provided in 46-18-212.

**History: En. Sec. 8, Ch. 214, L. 1981.**

**Cross-References**

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

## Part 4
## Uniform Trade Secrets Act

**Part Cross-References**

Hazardous chemical information — trade secret confidentiality, 50-78-205.

**30-14-401. Short title.** This part may be cited as the "Uniform Trade Secrets Act".

**History: En. Sec. 1, Ch. 104, L. 1985.**

**30-14-402. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

(A) derived from or through a person who had used improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**History: En. Sec. 2, Ch. 104, L. 1985; amd. Sec. 963, Ch. 56, L. 2009.**

**30-14-403. Injunctive relief — royalty.** (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include but are not limited to a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

**History: En. Sec. 3, Ch. 104, L. 1985; amd. Sec. 1, Ch. 269, L. 1995.**

**Cross-References**

Injunctions, Title 27, ch. 19.

**30-14-404. Damages.** (1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages.

**History:** **En. Sec. 4, Ch. 104, L. 1985; amd. Sec. 2, Ch. 269, L. 1995.**

**Cross-References**

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

**30-14-405. Costs and attorney fees.** If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable costs and attorney fees to the prevailing party.

**History:** **En. Sec. 5, Ch. 104, L. 1985.**

**Cross-References**

Costs and attorney fees, Title 25, ch. 10.

**30-14-406. Preservation of secret.** In an action under this part, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

**History:** **En. Sec. 6, Ch. 104, L. 1985.**

**30-14-407. Statute of limitations.** An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

**History:** **En. Sec. 7, Ch. 104, L. 1985.**

**Cross-References**

Statutes of limitations — general provisions, Title 27, ch. 2, part 1.

**30-14-408. Effect on other law.** (1) Except as provided in subsection (2), this part displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This part does not affect:

(a) contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) other civil remedies that are not based upon misappropriation of a trade secret; or

(c) criminal remedies, whether or not based upon misappropriation of a trade secret.

**History:** **En. Sec. 8, Ch. 104, L. 1985; amd. Sec. 3, Ch. 269, L. 1995.**

**Cross-References**

Theft, 45-6-301.

**30-14-409. Uniformity of application and construction.** This part shall be applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of this act among states enacting it.

**History:** **En. Sec. 9, Ch. 104, L. 1985.**

## Part 5
## Personal Solicitation Sales

**Part Cross-References**

Unlawful automated telephone solicitation — exceptions — penalties, 45-8-216.

**30-14-501. Purpose.** The purpose of this part is to afford persons subjected to high pressure personal solicitation sales tactics a cooling-off period.

**History:** **En. Sec. 1, Ch. 426, L. 1973; amd. Sec. 1, Ch. 191, L. 1977; R.C.M. 1947, 85-501; amd. Sec. 13, Ch. 322, L. 2003.**

**30-14-502. Definitions.** As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller to sell goods or services when either the seller or a person acting for the seller contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer, prior to the attempted sale, personally knows the identity of the seller, the name of the business, firm, or organization that the seller represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper;

(d) an attempted sale of an insurance policy; or

(e) an attempted sale of more than $5,000 of goods or services that are not primarily for personal, family, or household purposes.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for the seller if the buyer is required to give consideration in excess of $25 in cash or credit.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including an assignee of a seller.

**History: En. 85-502.1 by Sec. 2, Ch. 191, L. 1977; R.C.M. 1947, 85-502.1; amd. Sec. 138, Ch. 575, L. 1981; amd. Sec. 14, Ch. 322, L. 2003.**

**30-14-503. Disclosure obligation.** Before any personal solicitation, each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization that the seller represents, and the identity or kinds of goods or services that the seller wishes to demonstrate or sell. When the initial contact is made in person, the seller shall also show the potential buyer an identification card that clearly states the seller's name and the name of the business or organization that the seller represents. The disclosures required by this section must be made before asking any questions or making any statements except an initial greeting. Failure to provide the information required by this section may be punished by a civil fine of not more than $1,000 for each violation.

**History: En. 85-502.2 by Sec. 3, Ch. 191, L. 1977; R.C.M. 1947, 85-502.2; amd. Sec. 15, Ch. 322, L. 2003.**

**Cross-References**

Sales, Title 30, ch. 11, parts 1 and 2.

**30-14-504. Buyer's right to cancel — time allowed — notice — return of goods.** (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to the sale, provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to the buyer's signing of an agreement or offer to purchase relating to the sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, is considered given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and is sufficient if it indicates the intention of the buyer not to be bound.

(5) A personal solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

**History: En. Sec. 3, Ch. 426, L. 1973; amd. Sec. 4, Ch. 191, L. 1977; R.C.M. 1947, 85-503; amd. Sec. 964, Ch. 56, L. 2009.**

**Cross-References**

Seller's responsibilities, Title 30, ch. 11, part 2.

**30-14-505. Notice of right to cancel.** (1) The seller shall furnish the buyer a notice that contains the statement set forth in subsection (1)(a) or a statement as prescribed by federal trade commission rule governing door-to-door sales and printed in capital and lowercase letters of not less than 10-point boldfaced type with the seller's name and business address and the statement set forth in subsection (1)(b):

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within 3 days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within 3 days after you sign the contract.

(date)

(b) CONTRACT CANCELED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the personal solicitation sale by notifying the seller in any manner and by any means of the intention to cancel. However, failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by 30-14-504 begins to run from the time the seller complies with this section.

**History:** **En. Sec. 4, Ch. 426, L. 1973; amd. Sec. 5, Ch. 191, L. 1977; R.C.M. 1947, 85-504; amd. Sec. 965, Ch. 56, L. 2009.**

**Cross-References**

Seller's responsibilities, Title 30, ch. 11, part 2.

**30-14-506. Repayment to buyer — retention of goods by buyer — court award, costs, and attorney fees.** (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the downpayment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash downpayment or goods tendered as downpayment, the seller is liable to the buyer for the entire downpayment, and if the buyer is successful in a court action for recovery, the court shall also award the buyer $500 plus reasonable attorney fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered by the seller and has a lien on the goods or control for any recovery to which the buyer may be entitled.

**History:** **En. Sec. 5, Ch. 426, L. 1973; amd. Sec. 6, Ch. 191, L. 1977; R.C.M. 1947, 85-505; amd. Sec. 10, Ch. 137, L. 1979; amd. Sec. 16, Ch. 322, L. 2003.**

**Cross-References**

Sales and exchanges, Title 30, ch. 11, part 1.

Seller's responsibilities, Title 30, ch. 11, part 2.

**30-14-507. Redelivery of goods.** (1) Except as provided by 30-14-506(4), within a reasonable time after a personal solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than the buyer's residence. If the seller fails to demand possession of the goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in the buyer's possession both before cancellation or revocation and for a reasonable time after cancellation or revocation, during which time the goods are otherwise at the seller's risk, and the goods must be returned in substantially the same condition as received.

**History:** **En. Sec. 6, Ch. 426, L. 1973; amd. Sec. 7, Ch. 191, L. 1977; R.C.M. 1947, 85-506; amd. Sec. 966, Ch. 56, L. 2009.**

**30-14-508. Violation.** Except where inconsistent with the provisions of this part, a violation of this part is a violation of part 1.

**History:** **En. 85-507 by Sec. 8, Ch. 191, L. 1977; R.C.M. 1947, 85-507.**

## Part 6
## Sale of Imitation Indian Articles

**30-14-601. Definitions.** As used in this part, the following definitions apply:

(1) "Imitation Indian arts or crafts articles" means those made by machine or made wholly out of synthetic or artificial materials or articles which are not made by Indian labor or workmanship.

(2) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

**History: En. Sec. 1, Ch. 42, L. 1967; R.C.M. 1947, 85-301.**

**30-14-602. Articles to be designated and segregated.** A person may not distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles must be physically segregated from authentic Indian articles for display purposes. All imitation Indian arts or crafts articles must be displayed near a sign prominently and legibly designating the articles as imitation.

**History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973; R.C.M. 1947, 85-302; amd. Sec. 1, Ch. 182, L. 1991.**

**Cross-References**
Warranty defined, 30-11-209.

**30-14-603. Designation of authenticity.** Only those articles bearing a registered trademark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

**History: En. Sec. 3, Ch. 42, L. 1967; R.C.M. 1947, 85-303.**

**Cross-References**
Warranty defined, 30-11-209.

**30-14-604. Violation as misdemeanor.** Any person who violates this part is guilty of a misdemeanor.

**History: En. Sec. 4, Ch. 42, L. 1967; R.C.M. 1947, 85-304.**

**Cross-References**
When no penalty specified, 46-18-212.

## Part 7
## Fraudulent Financing of Mining and Oil Companies

**Part Cross-References**
Fraud, 28-2-404 through 28-2-406.
Minerals, Oil, and Gas, Title 82.

**30-14-701. Mining and oil companies — fraudulent handling of finances.** For the purposes of 30-14-701 through 30-14-704, the following acts and offenses relative to the handling of the finances of mine and oil operations within the state of Montana shall be deemed fraudulent:

(1) failure to expend at least 75% of all money raised from the public from the sale of stock or securities of any other kind or character in the actual operation and development of the oil and mining property or in the construction of treating plants or from bona fide payments on the purchase price of state property;

(2) failure to apply net earnings from said operations, after deducting only reasonable and legitimate expenses, to either a reserve fund, distribution of dividends, liquidation of bona fide indebtedness, or reasonable development of said properties;

(3) the operation of holding companies in such a manner as to deprive the stockholders of the parent company of an equitable interest in the earnings of the parent company.

**History: En. Sec. 1, Ch. 199, L. 1935; re-en. Sec. 11458.1, R.C.M. 1935; Sec. 94-2322, R.C.M. 1947; redes. 15-22-141 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-141.**

**30-14-702. Application.** The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 do not apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state securities commissioner or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange.

**History: En. Sec. 2, Ch. 199, L. 1935; re-en. Sec. 11458.2, R.C.M. 1935; Sec. 94-2323, R.C.M. 1947; redes. 15-22-142 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-142; amd. Sec. 1, Ch. 84, L. 1983.**

**30-14-703. Investigation of complaints.** Any stockholder or creditor of a mining or oil company as heretofore provided in 30-14-701 through 30-14-704 who has bona fide reason to believe that the provisions of 30-14-701 through 30-14-704 have been violated may complain relative thereto to the attorney general of the state, the county attorney of the county in which the property is located, or the state securities commissioner, and it shall be incumbent upon the officers mentioned to make a complete investigation of the records and affairs of said corporation or corporations. In the event the facts disclose the violation of the provisions of 30-14-701 through 30-14-704, it shall be the duty of the officer to prefer charges against the officers and directors of the corporation or corporations involved.

**History: En. Sec. 3, Ch. 199, L. 1935; re-en. Sec. 11458.3, R.C.M. 1935; Sec. 94-2324, R.C.M. 1947; redes. 15-22-143 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-143; amd. Sec. 8, Ch. 351, L. 1979.**

**30-14-704. Penalty.** Any person or the officers or directors of any corporation, cooperative association, or any other association of any kind or character found guilty of the violation of the provisions of 30-14-701 through 30-14-704 shall be subject to imprisonment in the state prison for a term of not less than 90 days or more than 3 years or by a fine of not less than $100 or more than $1,000 or both such fine and imprisonment.

**History: En. Sec. 4, Ch. 199, L. 1935; re-en. Sec. 11458.4, R.C.M. 1935; Sec. 94-2325, R.C.M. 1947; redes. 15-22-144 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 15-22-144.**

## Part 8
## Retail Motor Fuel Marketing (Repealed)

**30-14-801. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 1, Ch. 499, L. 1991.**

**30-14-802. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 2, Ch. 499, L. 1991.**

**30-14-803. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 3, Ch. 499, L. 1991; amd. Sec. 6, Ch. 358, L. 1995.**

**30-14-804. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 4, Ch. 499, L. 1991; amd. Sec. 1, Ch. 519, L. 1993.**

**30-14-805. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 5, Ch. 499, L. 1991.**

**30-14-806. Repealed.** Sec. 1, I.M. No. 134, Nov. 3, 1998.
**History: En. Sec. 6, Ch. 499, L. 1991.**

## Part 9
## Price Discrimination

**30-14-901. Discrimination in price.** (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 4 and 6.

**History: En. Sec. 1, Ch. 486, L. 1991; amd. Sec. 43, Ch. 130, L. 2005.**

**30-14-902. Return of net earnings or surplus of cooperative association — exemption of nonprofit institution from price discrimination provision.** (1) Section 30-14-901 may not be construed to prevent a cooperative association from returning to its members, producers, or consumers, in proportion to their purchases or sales from, to, or through the association, all or any part of the net earnings or surplus resulting from its trading operations.

(2) Section 30-14-901 does not apply to the purchase of supplies for its own use by a school, college, university, public library, church, hospital, or charitable institution not operated for profit.

**History: En. Sec. 2, Ch. 486, L. 1991.**

**30-14-903. Federal interpretation.** It is the intent of the legislature that in construing 30-14-901 and 30-14-902, due consideration and weight be given to the interpretations of the federal trade commission and the federal courts relating to the provisions of the federal Robinson-Patman Antidiscrimination Act regarding discrimination in price that are codified in 15 U.S.C. 13(b) and (c).

**History: En. Sec. 3, Ch. 486, L. 1991.**

**30-14-904. Burden of rebutting prima facie case of discrimination.** (1) In a proceeding for a violation of 30-14-901, if proof is made that there has been discrimination in price, the burden of rebutting the prima facie case by showing justification is upon the person charged with a violation of 30-14-901.

(2) A seller may rebut the prima facie case by showing that a lower price to a purchaser was made in good faith to meet an equally low price of a competitor.

**History: En. Sec. 4, Ch. 486, L. 1991.**

**30-14-905. Recovery on illegal contracts forbidden.** A contract, express or implied, made by a person in violation of the provisions of 30-14-901 is an illegal contract, and no recovery may be had on the contract.

**History: En. Sec. 5, Ch. 486, L. 1991.**

**30-14-906. Injunctions — damages — production of evidence.** (1) A person who is injured by a violation of 30-14-901 may maintain an action to enjoin a continuance of an act in violation of 30-14-901 and to recover damages. A court, upon finding that the defendant is violating or has violated the provisions of 30-14-901, shall enjoin the defendant from continuing the violation. It is not necessary to allege or prove actual damages to the plaintiff.

(2) In addition to injunctive relief, the plaintiff may recover from the defendant three times the amount of actual damages sustained plus attorney fees and costs of suit.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of a defendant may be brought into court and introduced into evidence by reference. Information so obtained may not be used against the defendant as a basis for a misdemeanor prosecution for a violation of 30-14-901.

**History: En. Sec. 6, Ch. 486, L. 1991.**

## Part 10
## Home Inspection Trade Practices Act (Renumbered and Repealed)

**30-14-1001. Repealed.** Sec. 10, Ch. 294, L. 2019.

**History: En. Sec. 1, Ch. 276, L. 1999.**

**30-14-1002. Repealed.** Sec. 10, Ch. 294, L. 2019.

**History: En. Sec. 2, Ch. 276, L. 1999.**

**30-14-1003. Repealed.** Sec. 10, Ch. 294, L. 2019.

**History: En. Sec. 3, Ch. 276, L. 1999.**

**30-14-1004. Renumbered 39-9-213.** Sec. 11, Ch. 294, L. 2019.

**30-14-1005. Repealed.** Sec. 10, Ch. 294, L. 2019.

**History: En. Sec. 5, Ch. 276, L. 1999.**

## Part 11
## Plain Language in Contracts

**Part Cross-References**

Contracts, Title 28, ch. 2.
Interpretation of contracts, Title 28, ch. 3.
Retail installment sales, Title 31, ch. 1, part 2.
Property and Casualty Insurance Policy Language Simplification Act, 33-15-333 through 33-15-340.

**30-14-1101. Short title.** This part may be cited as the "Plain Language in Contracts Act".

**History: En. Sec. 1, Ch. 615, L. 1985.**

**30-14-1102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means any writing that is substantially prepared in advance of a consumer transaction and which a seller, lessor, or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

(2) "Consumer" means an individual who borrows money or leases or obtains property or services under a written agreement.

(3) "Consumer contract" means an agreement for the sale, lease, or loan of money, property, or services primarily for personal, family, or household purposes.

(4) "Seller, lessor, or lender" means a person who regularly sells, lets, or lends in connection with consumer contracts.

**History: En. Sec. 2, Ch. 615, L. 1985.**

**30-14-1103. Requirements for contracts.** (1) A consumer contract must be written in plain language.

(2) A consumer contract is written in plain language if:

(a) it is written in a clear and coherent manner using words with common and everyday meanings;

(b) it is appropriately divided and captioned by its various sections;

(c) it uses type of readable size;

(d) it uses ink that contrasts with the paper.

**History: En. Sec. 3, Ch. 615, L. 1985.**

**30-14-1104. Scope.** (1) Except as provided in subsection (2), 30-14-1103 applies to any agreement in connection with a consumer contract entered into in this state between a consumer who is a resident of this state at the time of the transaction and a seller, lessor, or lender.

(2) Section 30-14-1103 does not apply to:

(a) consumer contracts in which the value of the money, property, or services bought, leased, or borrowed exceeds $50,000 at the time of the contract;

(b) consumer contracts in which securities or commodities accounts are bought, leased, or borrowed;

(c) an insurance policy or contract that is subject to the provisions of Title 33;

(d) a seller, lessor, or lender, if it is a government agency or instrumentality;

(e) the provision of public utility service under tariffs approved by the public service commission; or

(f) a transfer of real estate.

(3) The use of specific language expressly required or authorized by a court decision, state or federal statute or administrative rule, or governmental agency is not a violation of this part; nor is a legal description of real property a violation of this part.

**History: En. Sec. 4, Ch. 615, L. 1985; amd. Sec. 1, Ch. 185, L. 1987.**

**Cross-References**

GENERAL

Uniform Commercial Code — investment securities, Title 30, ch. 8.
Securities regulation, Title 30, ch. 10.
Regulation of utilities, Title 69, ch. 3.

DEFINITIONAL

Securities, 30-10-103.

**30-14-1105 through 30-14-1110 reserved.**

**30-14-1111. Consumer's remedy.** (1) Except as otherwise provided in 30-14-1112, if an agreement does not comply with the requirements of 30-14-1103, the seller, lessor, or lender is liable to a consumer who signed the agreement in an amount equal to:

(a) $50 plus any actual damages; and

(b) costs of the action.

(2) A consumer may bring an action under this section in any court of competent jurisdiction.

**History: En. Sec. 5, Ch. 615, L. 1985.**

**30-14-1112. Limitations on remedies.** (1) A consumer may not bring an action under 30-14-1111 after the date on which the consumer's obligations in connection with the agreement are scheduled to be finally performed.

(2) A seller, lessor, or lender is not liable under 30-14-1111 if a good faith attempt is made to comply with requirements of 30-14-1103.

(3) Noncompliance with the requirements of 30-14-1103 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to an obligation to perform in connection with the transaction.

(4) In a class action brought under 30-14-1111, the seller, lessor, or lender is liable under 30-14-1111 for not more than $10,000 plus actual damages.

(5) In any individual transaction, if there is more than one consumer who is party to a single-consumer contract, only one award of statutory damages may be made for that transaction.

(6) A consumer may not bring an action under this part on a contract if the consumer was represented at the signing of the contract by an attorney.

(7) Punitive damages may not be assessed in an action brought under this part.

**History: En. Sec. 6, Ch. 615, L. 1985; amd. Sec. 967, Ch. 56, L. 2009.**

**30-14-1113. Remedies cumulative — waiver void.** (1) Nothing in this part precludes a consumer from making any claim or raising any defense that would have been available to the consumer if this part were not in effect.

(2) A consumer may not waive the rights provided by this part, and any such waiver is void.

**History: En. Sec. 7, Ch. 615, L. 1985.**

**Cross-References**

Contracts that violate public policy of law, 28-2-702.
What conditions void, 28-2-707.

## Part 12
## Wheelchair Warranties

**30-14-1201. Short title.** This part may be known as the "Montana Wheelchair Warranty Act".

**History: En. Sec. 1, Ch. 259, L. 1995.**

**30-14-1202. Definitions.** As used in this part, the following definitions apply:

(1) "Collateral costs" mean the expenses incurred by a consumer for the repair of a nonconformity, including the costs of obtaining an alternative wheelchair.

(2) "Consumer" means a person:

(a) who purchases a wheelchair from a wheelchair dealer or manufacturer for purposes other than resale;

(b) to whom the wheelchair is transferred for purposes other than resale if the transfer occurred before the expiration of an express warranty applicable to the wheelchair;

(c) who may enforce the warranty; or

(d) who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Manufacturer" means a person or an agent of a person who manufactures or assembles wheelchairs. The term includes an importer, factory branch, and any warrantor of the manufacturer's wheelchairs. The term does not include a wheelchair dealer.

(4) "Nonconformity" means a defect that substantially impairs the use, value, or safety of a wheelchair or that is covered by an express warranty applicable to the wheelchair or to components of a wheelchair. The term does not include a condition that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by the consumer.

(5) "Wheelchair" means a manually powered or motor-driven wheelchair, scooter, or other motorized device that is used for mobility assistance, that costs $500 or more, and that a consumer purchases or accepts by transfer.

(6) "Wheelchair dealer" means a person who is in the retail business of selling wheelchairs.

**History: En. Sec. 2, Ch. 259, L. 1995.**

**30-14-1203. Express written warranty for wheelchairs — failure to furnish — implied warranty.** (1) A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express written warranty against nonconformity.

(2) The duration of the express written warranty may not be less than 1 year after the date of delivery of the wheelchair to the consumer.

(3) If a manufacturer fails to furnish an express written warranty, the wheelchair is covered by a warranty as if the manufacturer had furnished an express written warranty to the consumer under subsection (1). The implied warranty is for a period of 2 years following the date of delivery of the wheelchair to the consumer.

**History: En. Sec. 3, Ch. 259, L. 1995.**

**30-14-1204. Replacement for nonconformity to warranty.** (1) If, after a reasonable number of attempts to repair the nonconformity during the warranty period, the manufacturer or the wheelchair dealer is unable to conform the wheelchair to the warranty by repairing or correcting the nonconformity, the manufacturer shall, at the direction of the consumer either:

(a) replace the wheelchair with a new wheelchair of the same model and style and of comparable value, unless the replacement is impossible because of lack of availability, in which case the manufacturer shall replace it with a wheelchair of similar functional benefit and comparable value. Additionally, the manufacturer shall refund any finance charges and collateral costs to the consumer.

(b) accept return of the wheelchair from the consumer and refund the full purchase price or the total of all lease payments, plus any finance charges, collateral costs, and incidental damages, less a reasonable allowance for the consumer's use of the wheelchair. A reasonable allowance for use may not exceed an amount obtained by multiplying the purchase price by a fraction with a denominator of 1,825 and a numerator of the number of days the wheelchair was usable before the consumer first reported the nonconformity to the wheelchair dealer. A person may not enforce a lease against the consumer after the consumer returns a wheelchair under this subsection.

(2) A manufacturer who replaces a wheelchair in accordance with subsection (1)(a) or refunds the purchase price of a wheelchair in accordance with subsection (1)(b) shall also refund to the dealer the dealer's reasonable costs of the exchange or refund.

(3) A wheelchair returned by a consumer in this state pursuant to this section or by a consumer in another state under a similar law of the other state may not be sold or leased again in this state unless a full disclosure is made to a prospective consumer of the reasons for the return.

**History: En. Sec. 4, Ch. 259, L. 1995.**

**30-14-1205. Reasonable number of attempts to conform — presumption.** A reasonable number of attempts to conform a new wheelchair to the applicable warranty is presumed to have been made for the purposes of 30-14-1204 if:

(1) the same nonconformity has been subject to repair two or more times by the manufacturer or the wheelchair dealer during the warranty period and the nonconformity continues to exist; or

(2) the wheelchair is out of service because of a nonconformity for a cumulative total of 45 days during the warranty period after notification of the manufacturer or wheelchair dealer.

**History: En. Sec. 5, Ch. 259, L. 1995.**

**30-14-1206. Liability to manufacturer — wheelchair dealer exemption.** A wheelchair dealer is not liable to a manufacturer for a refund or wheelchair replacement in the absence of evidence that indicates that the repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

**History: En. Sec. 6, Ch. 259, L. 1995.**

**30-14-1207. Consumer's rights.** (1) This part may not be considered to limit the rights or remedies available to a consumer under any other law or contract.

(2) A waiver of rights under this part by a consumer is void.

(3) A consumer's rights and remedies under this part are in addition to the rights and remedies provided in chapter 2A.

(4) If the manufacturer fails to comply with 30-14-1204(1)(a) or (1)(b), a consumer may bring an action to recover for damages caused by a violation of this part. The court may award a consumer who prevails in an action triple the amount of any pecuniary loss. A court may also award costs, disbursements, reasonable attorney fees, and any equitable relief that the court determines is appropriate.

**History: En. Sec. 7, Ch. 259, L. 1995.**

## Part 13

## Service Contracts — Vehicle Theft Protection Products

**30-14-1301. Definitions.** As used in this part, the following definitions apply:

(1) "Administrator" means the person who is responsible for the administration of service contracts.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Incidental costs" means expenses specified in a vehicle theft protection product warranty that are incurred by the vehicle theft protection product warranty holder due to the failure of a vehicle theft protection product to perform as provided in the contract. Incidental costs may include but are not limited to insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the vehicle theft protection product warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

(4) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(5) "Provider" means a person who is contractually obligated to the service contract holder or vehicle theft protection product warranty holder under the terms of the service contract or vehicle theft protection product warranty.

(6) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(7) "Road hazard" means a hazard that is encountered while driving a motor vehicle, including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(8) (a) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.

(b) The term includes a contract or agreement sold for a separately stated consideration for a specific duration that provides for any of the following:

(i) the repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming into contact with a road hazard;

(ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without sanding, bonding, painting, or replacing a vehicle body panel;

(iii) the repair of small motor vehicle windshield chips or cracks, which may include replacement of the windshield for chips or cracks that cannot be repaired;

(iv) the replacement of one or more motor vehicle keys or key fobs in the event that the key or key fob becomes inoperable, lost, or stolen;

(v) in conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance of property, due to any of the following that result in a lease-end charge or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease, provided any payment may not exceed the purchase price of the vehicle:

(A) excess wear and use;

(B) damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior parts; or

(C) excess mileage; or

(vi) other services that may be approved by the department, if not inconsistent with the provisions of this title.

(c) The term does not include a motor club service as defined in 61-12-301.

(9) "Service contract holder" or "contract holder" means the person who is the purchaser or holder of a service contract.

(10) (a) "Vehicle theft protection product" means a device or system that:

(i) is installed on or applied to a motor vehicle;

(ii) is designed to prevent loss or damage to a motor vehicle from theft; and

(iii) includes a vehicle theft protection product warranty.

(b) The term does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system or to interior or exterior surfaces of a motor vehicle.

(11) "Vehicle theft protection product warranty" means a written agreement by a warrantor that provides that if the vehicle theft protection product fails to prevent loss or damage to a motor vehicle from theft, then the warrantor will pay to or on behalf of the vehicle theft protection product warranty holder specified incidental costs as a result of the failure of the vehicle theft protection product to perform pursuant to the terms of the written agreement.

(12) "Vehicle theft protection product warranty holder" or "warranty holder" means the person who is the purchaser of a vehicle theft protection product and the holder of a vehicle theft protection product warranty.

**History: En. Sec. 1, Ch. 162, L. 2007; amd. Sec. 1, Ch. 525, L. 2023.**

**30-14-1302. Requirements for conducting business.** (1) A provider may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts or vehicle theft protection product warranties in compliance with this part.

(2) Service contracts or vehicle theft protection product warranties may not be issued, sold, or offered for sale in the state unless the provider complies with the requirements of one of the following three provisions:

(a) insures all service contracts or vehicle theft protection product warranties under a reimbursement insurance policy issued by an insurer that is licensed, registered, or otherwise authorized to do business in the state and either:

(i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of at least $15 million and annually files copies of the insurer's financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile; or

(ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to policyholders and paid-in capital of less than $15 million but at least equal to or greater than $10 million and:

(A) upon request of the department, demonstrates that the company maintains a ratio of net written premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

(B) annually files copies of the insurer's audited financial statements, its national association of insurance commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of domicile;

(b) (i) maintains a funded reserve account, which may be subject to examination and review by the department, for its obligations under its contracts issued and outstanding in this state, the reserves of which may not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract or vehicle theft protection product warranty for all service contracts or vehicle theft protection product warranties issued and in force;

(ii) maintains a financial security deposit having a value of not less than 5% of the gross consideration received, less claims paid, on the sale of the service contract or vehicle theft protection product for all service contracts or vehicle theft protection product warranties issued and in force, but not less than $25,000 and consisting of one of the following:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by authorized insurers in this state;

(C) cash; or

(D) a letter of credit issued by a qualified financial institution; or

(c) maintains, either alone or with its parent company, a net worth of stockholders' equity of $100 million and provides the department, upon request, with:

(i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the securities and exchange commission within the last calendar year; or

(ii) if the company does not file with the securities and exchange commission, a copy of the company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(4) Except for the requirements provided in subsection (2), no other financial security requirements may be required.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts or vehicle theft protection products by the providers and related service contract or vehicle theft protection product sellers, administrators, and other persons are exempt from all provisions in Title 33, as provided in 33-1-102(10).

**History: En. Sec. 2, Ch. 162, L. 2007; amd. Sec. 2, Ch. 525, L. 2023.**

**30-14-1303. Required disclosures — reimbursement insurance policy.** (1) Reimbursement insurance policies insuring service contracts or vehicle theft protection product warranties issued, sold, or offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts or vehicle theft protection product warranties issued or sold by the provider.

(2) If covered service is not provided by the provider within 60 days of proof of loss by the service contract holder or vehicle protection product warranty holder, the contract holder or warranty holder is entitled to apply directly to the reimbursement insurance company.

**History:** **En. Sec. 3, Ch. 162, L. 2007; amd. Sec. 3, Ch. 525, L. 2023.**

**30-14-1304. Required disclosure — service contracts.** (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear understandable language that is easy to read and must disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain the following items:

(a) a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."; and

(b) the name and address of the insurer.

(3) Service contracts not insured under a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

(4) Service contracts must state the name and address of the provider and must identify any administrator if different from the provider, the service contract seller, and the service contract holder if provided by the holder. The identities of all parties referred to in this subsection are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale.

(5) A service contract or the service contract holder's receipt must state the total purchase price and the terms under which the contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of the sale with the service contract holder.

(6) Service contracts must state the existence of any deductible amount, as applicable.

(7) Service contracts must specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(8) Service contracts covering automobiles must state whether the use of nonoriginal manufacturer's parts are allowed.

(9) Service contracts must state any restrictions governing the transferability of the service contract, as applicable.

(10) Service contracts must state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the provider or service contract holder.

(11) (a) Except as provided in subsection (11)(b), the provider shall mail a written notice to the service contract holder at the last-known address of the contract holder contained in the records of the provider at least 5 days prior to the cancellation by the provider.

(b) Prior notice is not required if the reason for cancellation is:

(i) nonpayment of the provider fee;

(ii) a material misrepresentation by the service contract holder to the provider; or

(iii) substantial breach of duties by the service contract holder relating to the covered product or its use.

(c) Any cancellation notice must state the effective date and reason for the cancellation.

(12) Service contracts must set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner's manual.

**History:** **En. Sec. 4, Ch. 162, L. 2007.**

**30-14-1305. Required disclosure — vehicle theft protection product warranties.** (1) Vehicle theft protection product warranties offered, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear, understandable language that is easy to read and must disclose the following, as applicable:

(a) the name and address of the warrantor, the seller of the vehicle theft protection product, and the vehicle theft protection product warranty holder;

(b) the total purchase price of the vehicle theft protection product and the terms under which it is to be paid, however, the purchase price is not required to be preprinted on the vehicle theft protection product warranty and may be negotiated with the consumer at the time of sale;

(c) the procedure for making a claim, including a telephone number for the warrantor or administrator responsible for processing the claim;

(d) the payments or performance to be provided under the warranty, including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions, or exclusions. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the vehicle theft protection product warranty holder.

(e) the obligations and duties of the vehicle theft protection product warranty holder, such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;

(f) any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any. A warrantor may only cancel a vehicle theft protection product warranty if the vehicle theft protection product warranty holder does any of the following:

(i) fails to pay for the vehicle theft protection product;

(ii) makes a material misrepresentation to the seller of the vehicle theft protection product or to the warrantor;

(iii) commits fraud related to the purchase of the vehicle theft protection product, registration of the vehicle theft protection product warranty, or a claim made under the vehicle theft protection product warranty;

(iv) substantially breaches the vehicle theft protection product warranty holder's duties under the warranty;

(v) fails to make required payments on the vehicle so that the vehicle is repossessed; and

(vi) damages the vehicle in such a way so that the vehicle is considered a total loss.

(2) A vehicle theft protection product warranty that is insured by a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain the following items:

(a) a statement that is in a form identical or similar to the following: "This contract is not insurance and is not subject to the insurance laws of this state";

(b) that the obligations of the warrantor are insured under a reimbursement insurance policy;

(c) that if a warrantor fails to perform or make a payment due under the terms of the warranty within 60 days after the vehicle theft protection product warranty holder requests performance or payment pursuant to the terms of the warranty, the vehicle theft protection product warranty holder may request performance or payment directly from the warrantor's reimbursement insurance policy insurer; and

(d) the name, address, and telephone number of the warrantor's reimbursement insurance policy insurer.

(3) Vehicle theft protection product warranties not insured under a reimbursement insurance policy pursuant to 30-14-1302(2)(a) must contain a statement that is in a form identical or similar to the following: "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor."

**History: En. Sec. 4, Ch. 525, L. 2023.**

## Part 14
## Montana Telemarketing Registration and Fraud Prevention Act

**30-14-1401. Short title.** This part may be cited as the "Montana Telemarketing Registration and Fraud Prevention Act".

**History:** En. Sec. 1, Ch. 342, L. 1999.

**30-14-1402. Purpose — scope — rulemaking.** (1) The purposes of this part are to require telemarketers to register in this state, to establish standards of conduct for telemarketers, and to provide penalties for violations of this part.

(2) This part does not apply to any claim brought by a person under Title 30, chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought by a person pursuant to the provisions of this part.

(3) The department shall adopt rules to implement the provisions of this part. The rules must include but are not limited to rules:

(a) establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers;

(b) for administering a telemarketing fraud consumer awareness program; and

(c) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of this part.

**History:** En. Sec. 2, Ch. 342, L. 1999.

**30-14-1403. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this

state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer.

**History: En. Sec. 3, Ch. 342, L. 1999; amd. Sec. 68, Ch. 483, L. 2001; amd. Sec. 10, Ch. 280, L. 2005.**

**30-14-1404. Registration of sellers or telemarketers.** (1) (a) Unless exempt under 30-14-1405, a person may not act as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the following information:

(i) the true name, current address, telephone number, and location of the seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of the application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(iv) whether there has been entered against any principal or manager an injunction, a temporary restraining order, or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any federal or state consumer protection law. The information must include any pending litigation against the applicant.

(v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(vi) the true name, current home address, date of birth, social security number, and all other names of the following:

(A) each telemarketer or other person to be employed by the seller;

(B) each person participating in or responsible for the management of the seller's business; and

(C) each person, office manager, or supervisor principally responsible for the management of the seller's business;

(vii) the name, address, and account number of every institution where banking or any other monetary transactions are conducted by the seller; and

(viii) a copy of all scripts, outlines, or presentation material that the seller will require a telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(2) (a) The application for registration or renewal must be accompanied by a surety bond in the amount of $50,000. The bond must provide for indemnification to the state of Montana for any person suffering a loss as the result of violation of this part.

(b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified mail to the applicant and to the department. Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be treated as lapsed.

(c) The surety bond must remain in effect for 1 year from the period the telemarketing business ceases to operate in this state.

(d) (i) Any business required under this part to file a bond with a registration application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the amount of $50,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for 1 year from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to the state of Montana for all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

(3) The following constitute a violation of this part:

(a) failure to register, maintain, or renew a registration if required;

(b) failure to meet the surety bond requirement if required to provide a bond;

(c) including any false or misleading information on a registration application; and

(d) misrepresenting that a seller or telemarketer is registered.

(4) A violation of subsection (3) of this section also constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

**History: En. Sec. 4, Ch. 342, L. 1999.**

**30-14-1405. Exemptions from registration and bonding.** The registration and bonding requirements of 30-14-1404 do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;

(3) a business-to-business sale;

(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:

(a) contains a written description or illustration of each item offered for sale;

(b) includes the business or home address of the person soliciting the sale;

(c) includes at least 20 pages of written material and illustrations;

(d) is distributed in more than one state; and

(e) has a circulation by mailing of not less than 150,000;

(5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;

(6) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;

(7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;

(8) an insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;

(9) a person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;

(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone

cooperative or its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;

(11) a person soliciting business from consumers that have an existing business relationship with or have previously purchased from the business enterprise for which the person is soliciting;

(12) a person operating a retail business establishment under the same name as that used in the solicitation and:

(a) the products or services are displayed and offered for sale at the business establishment; and

(b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;

(13) a person soliciting for the sale of a magazine or newspaper of general circulation;

(14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

(15) a book, video, record, or multimedia club, contractual plan, or arrangement:

(a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;

(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or

(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

(16) a real estate salesperson or broker licensed by this state;

(17) a person that has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;

(18) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.

**History: En. Sec. 5, Ch. 342, L. 1999.**

**30-14-1406. Telemarketing fraud consumer awareness program.** The department shall establish and administer a telemarketing fraud consumer awareness program. The program must be funded as provided in 30-14-1407(2).

**History: En. Sec. 6, Ch. 342, L. 1999.**

**30-14-1407. Authority of department and county attorney.** (1) The department and a county attorney have the same authority to enforce and carry out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in 30-14-1406. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county in which the action was commenced.

**History: En. Sec. 7, Ch. 342, L. 1999; amd. Sec. 44, Ch. 130, L. 2005; amd. Sec. 11, Ch. 280, L. 2005.**

**30-14-1408. Recordkeeping requirements.** (1) (a) A telemarketer shall keep records subject to this section for a period of 24 months from the date the record is produced.

(b) The records that must be kept for the 24-month period include:

(i) all substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(ii) the name and last-known address of each prize recipient and the prize awarded;

(iii) the name and last-known address of each consumer, the goods or services purchased, the date the goods or services were shipped or provided, the amount of goods or services provided, and the amount paid by the consumer for the goods or services;

(iv) the name, any fictitious name used, the last-known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales; however, if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(v) all written authorizations required to be provided or received under this part.

(2) In the event of any dissolution or termination of a telemarketer's business, the principal of that telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's business, the successor shall maintain all records required under this section.

**History:** **En. Sec. 8, Ch. 342, L. 1999.**

**30-14-1409. Acts and practices not governed by part.** The following acts and practices are not subject to the provisions of this part:

(1) telephone calls in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face-to-face sales presentation by the seller or telemarketer; and

(2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller or telemarketer.

**History:** **En. Sec. 9, Ch. 342, L. 1999.**

**30-14-1410. Disclosure and contract requirements.** (1) When contacting a consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the following:

(a) the identity of the seller or telemarketer;

(b) that the purpose of the call is to sell goods or services;

(c) the nature of the goods or services; and

(d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize promotion.

(2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in a clear and conspicuous manner the following information:

(a) the total cost of the goods or services;

(b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or services;

(c) in any prize promotion:

(i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the factors used in calculating the odds; and

(ii) the "no-purchase no-payment" method of participating in the prize promotion with either instructions on how to participate or an address or a local or toll-free telephone number that consumers may write or call for information on how to participate.

(3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following information:

(a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods or services;

(b) any material aspect of the nature or terms of the seller's or telemarketer's refund, cancellation, exchange, or repurchase policies; or

(c) any material aspect of a prize promotion, including but not limited to the nature or value of the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

(4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in the case of a sale made by telephone, the buyer may cancel the sale at any time prior to signing an agreement or offer to purchase the goods or services.

(b) Cancellation occurs:

(i) when written notice of cancellation is given to the seller or telemarketer; or

(ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited in the mail.

(c) A notice of cancellation does not have to be in the form prescribed by the seller or telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

(d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

(5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until the purchaser receives the notice required by subsection (5)(b).

(b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within 10 business days of the day your written notice of cancellation is received by the seller and any security interest connected to this transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this sales contract; or you may, if you wish, comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick up the goods within 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense and risk of the return of the goods to the seller, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to return the goods, then you remain liable for the performance of all your obligations under the sales contract.

To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of seller) at the following address (address of the seller)."

(c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish the purchaser with:

(i) the seller's or telemarketer's name and the name of the person to whom a notice of cancellation is to be given if different from the seller's or telemarketer's name;

(ii) the legal name of the company for whom the seller or telemarketer is soliciting;

(iii) the seller's or telemarketer's street address and telephone number; and

(iv) the date and a description of the telephone solicitation.

(6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or telemarketer, at a minimum, has a policy of:

(a) accepting returns or canceling services in connection with the return of unused and undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase applied to the account that was debited;

(b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone or in written material included with advertising or promotional material or with the delivery of the goods or services; and

(c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the date on which the seller or telemarketer receives the returned goods or notice of cancellation of services. A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review and return for refund policy requirements of this subsection.

(7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the requirements of this section.

(8) In addition to subsection (7), it is a violation of this part for any seller or telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood of confusion or misunderstanding to any reasonable consumer.

(9) Failure to comply with the provisions of this section is a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

**History: En. Sec. 10, Ch. 342, L. 1999.**

**30-14-1411. Prohibited acts and practices.** (1) It is a violation of this part for a seller or telemarketer, purposely or knowingly, to engage in the following conduct:

(a) advertise or represent that registration as a seller or telemarketer equals an endorsement or approval by the state or any political subdivision of the state;

(b) assist, support, or provide substantial assistance to any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act or practice violating 30-14-1408 or this section;

(c) request a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(d) request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the person in a prior telemarketing transaction; however, this subsection does not apply to services rendered to a person by a licensed attorney;

(e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, bond, or other account without the person's express written authorization; or

(f) procure the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a person's payment unless the goods are delivered with the opportunity to inspect them before any payment is collected.

(2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103 and is subject to the penalty provisions of 30-14-1414 and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

**History: En. Sec. 11, Ch. 342, L. 1999.**

**30-14-1412. Abusive acts and practices.** (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

(a) use threatening, intimidating, or profane or obscene language;

(b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;

(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;

(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location;

(e) engage in any other conduct that would be considered abusive to any reasonable consumer; or

(f) intentionally block a person using caller identification or "*69" from accessing the seller's or telemarketer's phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity's personnel can be contacted.

(2) The department may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

**History: En. Sec. 12, Ch. 342, L. 1999; amd. Sec. 1, Ch. 350, L. 2001; amd. Sec. 12, Ch. 280, L. 2005.**

**30-14-1413. Civil remedies — venue — burden of proof.** (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or $500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court in the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception.

**History:** **En. Sec. 13, Ch. 342, L. 1999; amd. Sec. 13, Ch. 280, L. 2005; amd. Sec. 11, Ch. 535, L. 2021.**

**30-14-1414. Penalties — misdemeanor and felony violations — burden of proof.** (1) (a) A person who fails to follow the requirements of 30-14-1404, 30-14-1408, 30-14-1410, 30-14-1411, or 30-14-1412 commits the offense of failure to comply with the requirements of this part. Except as otherwise provided in 30-14-1411, this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of this part shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of this part, a person shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates this part with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed $500 shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds $500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of this part, the burden of producing evidence to support a defense based on an exemption under 30-14-1405 or an exception from a definition in 30-14-1403 is on the person claiming the exemption or exception.

**History:** **En. Sec. 14, Ch. 342, L. 1999.**

## Part 15
## Unsolicited Advertisement Facsimile Transmissions

**30-14-1501. Definitions — unsolicited advertisement through facsimile transmission prohibited — violation.** (1) As used in this section, the following definitions apply:

(a) "Telephone facsimile machine" means equipment that has the capacity to:

(i) transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line onto paper; or

(ii) transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(b) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or service that is transmitted to a person without that person's prior express invitation or permission.

(2) (a) Except as provided in subsection (2)(b), a person may not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

(b) The prohibition contained in subsection (2)(a) does not pertain to a facsimile transmission containing public safety information that is sent by a law enforcement or public safety entity.

(3) A violation of this section is a violation of Title 30, chapter 14, part 1.

**History:** **En. Sec. 1, Ch. 312, L. 2003.**

## Part 16
## Telephone Solicitation No-Call List

**30-14-1601. Definitions.** As used in this part, the following definitions apply:

(1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

(ii) the entity is required by law or rule to develop and maintain a no-call list;

(e) by a natural person responding to a referral or working from the person's primary residence; or

(f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state.

**History: En. Sec. 1, Ch. 589, L. 2003; amd. Sec. 14, Ch. 280, L. 2005.**

**30-14-1602. Telephone solicitation of residential subscribers on no-call list prohibited.** A person or entity may not make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the department, in accordance with rules promulgated pursuant to 30-14-1603, of the residential subscriber's objection to receiving telephone solicitations.

**History: En. Sec. 2, Ch. 589, L. 2003.**

**30-14-1603. Department to provide for no-call list database — rules — inclusion of national database — database not public record — no cost to subscribers.** (1) The department shall provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. A residential subscriber may be listed in the database without cost to the subscriber.

(2) The department shall promulgate rules and regulations governing the state no-call database that are necessary and appropriate to fully implement the provisions of this part. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to 30-14-1605. The information is confidential information as defined in 2-6-1002 and is protected from disclosure.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list.

**History: En. Sec. 3, Ch. 589, L. 2003; amd. Sec. 15, Ch. 280, L. 2005; amd. Sec. 49, Ch. 348, L. 2015.**

**30-14-1604. Interference with caller identification service prohibited.** (1) Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of the call, state clearly the identity of the person or entity initiating the call.

(2) A person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state may not knowingly use any method to block or otherwise circumvent the residential subscriber's use of a caller identification service.

**History: En. Sec. 4, Ch. 589, L. 2003.**

**30-14-1605. Penalties — department to enforce civil, criminal, and injunctive relief — private actions — defenses — statute of limitations.** (1) (a) The department or a county attorney may initiate proceedings relating to a knowing violation or threatened knowing violation of 30-14-1602 or 30-14-1604.

(b) The proceedings may include a request for any of the following:

(i) an injunction;

(ii) a civil penalty up to a maximum of $5,000 for each knowing violation;

(iii) additional relief that a court of competent jurisdiction may order.

(c) The department may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of 30-14-1602 or 30-14-1604.

(2) In addition to the penalties provided in subsection (1), any person or entity that violates 30-14-1604 is subject to all penalties, including criminal penalties, remedies, and procedures provided in the unfair trade practices and consumer protection laws, as provided for in Title 30, chapter 14, parts 1 and 2. The remedies available in this section are cumulative and in addition to any other remedies available by law.

(3) Any residential subscriber who has received more than one telephone solicitation within any 12-month period by or on behalf of the same person or entity in violation of 30-14-1602 or 30-14-1604 may bring an action to:

(a) enjoin the violation; and

(b) recover the greater of:

(i) the actual monetary loss from a knowing violation; or

(ii) $5,000 in damages for each knowing violation.

(4) It is a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of 30-14-1602 or 30-14-1604.

(5) An action or proceeding may not be brought pursuant to this section more than 2 years after:

(a) the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(b) the termination of any proceeding or action arising out of the same violation or violations by the state of Montana.

(6) A court of this state may exercise personal jurisdiction, in the manner provided by law, over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section.

(7) The remedies, duties, prohibitions, and penalties provided in this part are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(8) A provider of telephone caller identification service may not be held liable for violations of 30-14-1602 or 30-14-1604 that are committed by other persons or entities.

**History: En. Sec. 5, Ch. 589, L. 2003.**

**30-14-1606. Telephone solicitation no-call list administration account — purpose and administration.** (1) There is a telephone solicitation no-call list administration account in the state special revenue fund for administration of this part by the department.

(2) Revenue generated from fees collected from persons or entities obtaining access to the no-call list database and any civil penalties recovered by the department pursuant to 30-14-1605 must be deposited into the telephone solicitation no-call list administration account.

**History: En. Sec. 6, Ch. 589, L. 2003.**

## Part 17
## Impediment of Identity Theft

**30-14-1701. Purpose.** The purpose of 30-14-1701 through 30-14-1705, 30-14-1712, and 30-14-1713 is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332.

**History: En. Sec. 4, Ch. 518, L. 2005; amd. Sec. 3, Ch. 276, L. 2007.**

**30-14-1702. Definitions.** As used in 30-14-1701 through 30-14-1705, 30-14-1712, and 30-14-1713, unless the context requires otherwise, the following definitions apply:

(1) (a) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) "Electronic mail message" means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or electronic mailbox and a reference to an internet domain, whether or not displayed, to which an electronic message can be sent or delivered.

(4) "Individual" means a natural person.

(5) "Internet" has the meaning provided in 2-17-551.

(6) "Internet services provider" has the meaning provided in 2-17-602.

(7) "Personal information" means an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport number, driver's license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual's finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

(8) (a) "Records" means any material, regardless of the physical form, on which personal information is recorded.

(b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) "Website" means an electronic location that has a single uniform resource locator or other single location with respect to the internet.

**History: En. Sec. 5, Ch. 518, L. 2005; amd. Sec. 4, Ch. 276, L. 2007.**

**30-14-1703. Record destruction.** A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable.

**History: En. Sec. 6, Ch. 518, L. 2005.**

**30-14-1704. Computer security breach.** (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or consistent with any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(2) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data system immediately following discovery if the personal information was or is reasonably believed to have been acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay in notification. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, the following definitions apply:

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (i) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) social security number;

(B) driver's license number, state identification card number, or tribal identification card number;

(C) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account;

(D) medical record information as defined in 33-19-104;

(E) a taxpayer identification number; or

(F) an identity protection personal identification number issued by the United States internal revenue service.

(ii) Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) (a) For purposes of this section, notice may be provided by one of the following methods:

(i) written notice;

(ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. 7001;

(iii) telephonic notice; or

(iv) substitute notice, if the person or business demonstrates that:

(A) the cost of providing notice would exceed $250,000;

(B) the affected class of subject persons to be notified exceeds 500,000; or

(C) the person or business does not have sufficient contact information.

(b) Substitute notice must consist of the following:

(i) an electronic mail notice when the person or business has an electronic mail address for the subject persons; and

(ii) conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; or

(iii) notification to applicable local or statewide media.

(6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and that does not unreasonably delay notice is considered to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the data system.

(7) If a business discloses a security breach to any individual pursuant to this section and gives a notice to the individual that suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual from a consumer credit reporting agency, the business shall coordinate with the consumer reporting agency as to the timing, content, and distribution of the notice to the individual. The coordination may not unreasonably delay the notice to the affected individuals.

(8) Any person or business that is required to issue a notification pursuant to this section shall simultaneously submit an electronic copy of the notification and a statement providing the date and method of distribution of the notification to the attorney general's consumer protection office, excluding any information that personally identifies any individual who is entitled to receive notification. If a notification is made to more than one individual, a single copy of the notification must be submitted that indicates the number of individuals in the state who received notification.

**History:** En. Sec. 7, Ch. 518, L. 2005; amd. Sec. 3, Ch. 180, L. 2007; amd. Sec. 3, Ch. 62, L. 2015.

**30-14-1705. Department to restrain unlawful acts — penalty.** (1) Whenever the department has reason to believe that a person has violated this part and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to that person pursuant to 30-14-111(2).

(2) The provisions of 30-14-111(3) and (4) and 30-14-112 through 30-14-115 apply to this part.

(3) A violation of this part is a violation of 30-14-103, and the penalties for a violation of this part are as provided in 30-14-142.

**History:** En. Sec. 8, Ch. 518, L. 2005.

**30-14-1706 through 30-14-1711 reserved.**

**30-14-1712. Fraudulent electronic misrepresentation — penalties — exemption.** (1) An individual or business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information by purporting to be a third-party individual or a business without the authority or approval of the third-party individual or business is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as "phishing".

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action, as provided in 30-14-1713.

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

**History:** **En. Sec. 1, Ch. 276, L. 2007.**

**30-14-1713. Remedies for fraudulent electronic misrepresentation.** (1) A business, including the owner of a website or the owner of a trademark, that is adversely affected by a violation of 30-14-1712(1) may bring an action to recover the greater of actual damages or $500,000.

(2) An individual who is adversely affected by a violation of 30-14-1712(1) may bring an action against an individual or a business that has directly violated 30-14-1712(1) for the greater of three times actual damages or $5,000 for each violation.

**History:** **En. Sec. 2, Ch. 276, L. 2007.**

**30-14-1714.** *(Effective January 1, 2026)* **Property right in use of names, voices, and visual likenesses — penalties for unauthorized use.** (1) An individual has property rights in their name, voice, and visual likeness, if the individual is:

(a) a resident of this state; or

(b) domiciled in this state at the time of their death.

(2) Whether or not an individual commercially benefits during their lifetime, their rights:

(a) are freely transferable, licensable, and descendible, in whole or in part;

(b) do not expire on the death of the individual to whom the right applies; and

(c) are exclusive to the individual to whom the right applies during their lifetime, subject to the transfer of rights as provided in subsection (2)(a), and to the rights holder's executors, heirs, transferees, or devisees for a period of 20 years after the death of the individual.

(3) A person is liable for damages as set forth in subsection (4) if the person, without consent of the individual exercising the individual's property rights or the holder of the individual's property rights:

(a) distributes, transmits, or otherwise makes available to the public an algorithm, software, tool, or other technology, service, or device with actual and specific knowledge that the primary purpose of that algorithm, software, tool, or other technology, service, or device is to produce one or more unauthorized digital voice depictions or digital visual depictions of the particular, identified individual for commercial use; or

(b) intentionally publishes, performs, distributes, transmits, or makes available to the public a digital voice depiction or digital visual depiction for commercial use with actual and specific knowledge that the depiction is a digital voice depiction or digital visual depiction of the individual and that the depiction is not authorized by the individual or the holder of the individual's property rights.

(4) A person who violates subsection (3)(a) or (3)(b) is liable to the injured person for the actual damages suffered by the person, plus any profits from the unauthorized use of the individual's name, voice, or visual likeness.

(5) If a person who violated subsection (3)(b) had an objectively reasonable belief that material that is claimed to be an unauthorized digital voice depiction or digital visual depiction did not qualify as an unauthorized digital voice depiction or digital visual depiction, the person is not liable for actual damages regardless of whether the material is ultimately determined to be an unauthorized digital voice depiction or digital visual depiction.

(6) (a) In establishing profits under subsection (4), the injured party must be required only to present proof of the gross revenue being either directly or indirectly attributable to the unauthorized use.

(b) The person who violates this section must be required to prove the person's expenses are deductible from this violation.

(7) An action to enforce this section may be brought by:

(a) the individual whose name, voice, or visual likeness is at issue; or

(b) any person to which the individual has assigned, bequeathed, transferred, or exclusively licensed their name, voice, or visual likeness rights.

(8) To the extent the use is protected by the first amendment to the United States constitution and Article II, section 7, of the Montana constitution, it is not a violation if the use is:

(a) by a news-gathering organization;

(b) in connection with a news report, public affairs report, sports broadcast, or account;

(c) for the purposes of comment, criticism, scholarship, satire, or parody;

(d) a representation of an individual as themself in audiovisual works as defined in 17 U.S.C. 101, unless the work containing the use is intended to create, and does create, the false impression that the work is an authentic recording in which the individual participated;

(e) fleeting or negligible; or

(f) in an advertisement or commercial announcement for a work described in this subsection (8).

(9) No civil action may be maintained under the provisions of this section unless it is commenced within 4 years after the party seeking to bring the claim discovered, or should have reasonably discovered, the violation.

(10) For the purposes of this section, the following definitions apply:

(a) "Broadband internet access service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints. The term includes capabilities that are incidental to and enable the operation of the communications service. The term does not include dial-up internet access service.

(b) "Digital visual depiction" means a newly created, computer-generated, and highly realistic depiction made of the visual likeness of a particular individual that is created or altered in whole or in part using digital technology in a way that the depiction is nearly indistinguishable from an actual depiction of the particular individual. The depiction is such that a reasonable person believes the depiction is genuine and:

(i) it depicts the particular individual in a manner that the particular individual did not actually perform or appear; or,

(ii) if the particular individual did perform or appear, the depiction was materially altered from the fundamental character of the performance or appearance.

(c) "Digital voice depiction" means a newly created, computer-generated, and highly realistic audio rendering of a particular individual's voice that is created or altered in whole or in part using digital technology and is fixed in a sound recording or audiovisual work that is nearly indistinguishable from the particular individual's actual voice. The depiction is such that a reasonable person believes the depiction is genuine and:

(i) it depicts the particular individual in a manner that the particular individual did not actually perform; or

(ii) if the particular individual did perform, the fundamental character of the performance and the depiction were materially altered from the fundamental character of the performance or appearance.

(d) "Individual" means a natural person, living or dead, and includes the estate of an incompetent or deceased individual.

(e) "Person" means an individual, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, and other organizations.

(f) "Visual likeness" means an actual or simulated physical depiction or representation, digital depiction or representation, or other form of depiction or representation, regardless of the means of its creation, that is readily identifiable as an individual's face or other personal information displayed constituting readily identifiable characteristics of the individual.

(g) "Voice" means sounds in any medium containing the actual voice of an individual, whether recorded or generated by computer, artificial intelligence, algorithm, or other digital technology, service, or device, to the extent that the individual depicted or simulated is readily identifiable from the sound of the voice depicted or simulated, or from other personal information displayed constituting readily identifiable characteristics of the individual.

(11) This section does not apply to a provider of broadband internet access service.

**History: En. Sec. 1, Ch. 685, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 3, Ch. 685, L. 2025, provided: "[This act] is effective January 1, 2026."

**30-14-1715 through 30-14-1720 reserved.**

**30-14-1721. Identity theft impediments — credit cards — definition.** (1) A credit card issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed application for a credit card that lists an address that is different from the address on the offer or solicitation shall verify the change of address by contacting the person to whom the solicitation or offer was mailed, as provided in 30-14-1722.

(2) Notwithstanding any other provision of law, a person to whom an offer or solicitation to receive a credit card is made is not liable for the unauthorized use of a credit card issued in response to that offer or solicitation if the credit card issuer does not verify the change of address pursuant to subsection (1) prior to the issuance of the credit card unless the credit card issuer proves that this person actually incurred the charge on the credit card.

(3) When a credit card issuer receives a written or oral request for a change of the cardholder's billing address and then receives a written or oral request for an additional credit card within 10 days after the requested address change, the credit card issuer may not mail the requested additional credit card to the new address or, alternatively, activate the requested additional credit card unless the credit card issuer has verified the change of address.

(4) (a) Except as provided in subsections (4)(b) through (4)(d), a person, firm, partnership, association, corporation, or limited liability company that accepts credit cards for the transaction of business may not print more than the last five digits of the credit card account number or the expiration date upon any receipt provided to the cardholder.

(b) Subsection (4)(a) applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the person's credit card number is by handwriting or by an imprint or copy of the credit card.

(c) Subsection (4)(a) applies beginning January 1, 2008, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use before January 1, 2005.

(d) Subsection (4)(a) applies beginning January 1, 2006, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2005.

(5) (a) As used in this section, "credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(b) "Credit card" does not mean any of the following:

(i) any single credit device used to obtain telephone property, labor, or services in any transaction with an entity under regulation as a public utility;

(ii) any device that may be used to obtain credit pursuant to an electronic funds transfer, but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account;

(iii) any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products that will be used primarily for business rather than personal or family purposes.

**History: En. Sec. 2, Ch. 518, L. 2005.**

**30-14-1722. Identity theft impediments — credit card renewal — telephone accounts.** (1) A credit card issuer that receives a change of address request, other than for a correction of a typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that request is received shall send to that cardholder a change of address notification that is addressed to the cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to the effective date of the change of address, the notification must be sent within 30 days of the change of address request. If the replacement credit card is requested after the effective date of the change of address, the notification must be sent within 30 days of the request for the replacement credit card.

(2) Any business entity that provides telephone accounts that receives a change of address request, other than for a correction of a typographical error, from an account holder who orders new service shall send to that account holder a change of address notification that is addressed to the account holder at the account holder's previous address of record. The notification must be sent within 30 days of the request for new service.

(3) The notice required pursuant to subsection (1) or (2) may be given by telephone or electronic mail communication if the credit card issuer or business entity that provides telephone accounts reasonably believes that it has the current telephone number or electronic mail address for the account holder or cardholder who has requested a change of address. If the notification is in writing, it may not contain the consumer's account number, social security number, or other personal identifying information but may contain the consumer's name, previous address, and new address of record. For business entities described in subsection (2), the notification may also contain the account holder's telephone number.

(4) A credit card issuer or a business entity that provides telephone accounts is not required to send a change of address notification when a change of address request is made in person by a consumer who has presented valid identification or is made by telephone and the requester has provided a unique alphanumeric password.

(5) As used in this section, the following definitions apply:

(a) "Credit card" has the meaning provided in 30-14-1721.

(b) "Telephone account" means an account with a telecommunications carrier, as defined in 69-3-803.

**History:** **En. Sec. 3, Ch. 518, L. 2005.**

**30-14-1723 through 30-14-1725 reserved.**

**30-14-1726. Definitions.** As used in 30-14-1726 through 30-14-1736, the following definitions apply:

(1) "Consumer" means an individual, a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101, or a conservator in the case of a protected person as defined in 72-5-101.

(2) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing credit reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

(3) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency:

(a) bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) "Person" means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) "Proper identification" means information sufficient to verify identity.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) "Security freeze" means a notice that:

(i) is placed in a consumer's credit report at the request of the consumer;

(ii) is subject to exceptions and exemptions provided in 30-14-1734;

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or credit score without the express authorization of the consumer, as provided in 30-14-1729.

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

**History:** **En. Sec. 1, Ch. 138, L. 2007; amd. Sec. 1, Ch. 42, L. 2011.**

**30-14-1727. Placement of security freeze.** (1) A consumer may elect to place a security freeze on the consumer's own credit report by making a request:

(a) in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive the request; or

(b) directly to the consumer reporting agency through a secure electronic connection specified by the consumer reporting agency.

(2) A consumer, acting in the capacity of a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101 or a conservator in the case of a protected person as defined in 72-5-101, may request that a consumer reporting agency place a freeze on the credit report of the minor or incapacitated or protected person by making a request in writing to the consumer reporting agency at an address designated by the consumer reporting agency to receive the request.

**History:** **En. Sec. 2, Ch. 138, L. 2007; amd. Sec. 2, Ch. 42, L. 2011.**

**30-14-1728. Consumer reporting agency requirements.** (1) Except as provided in subsection (2), a consumer reporting agency shall place a security freeze on a consumer's credit report no later than 5 business days after receiving from the consumer:

(a) a written or electronic request, as provided in 30-14-1727;

(b) proper identification; and

(c) a fee, if applicable.

(2) If a consumer who has been the victim of identity theft, as prescribed by 45-6-332, requests a security freeze, the consumer reporting agency shall place a security freeze on the consumer's credit report no later than 24 hours after receiving notice as provided in 30-14-1727 and a valid police report, investigative report, or complaint that the consumer has filed with a law enforcement agency.

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days of placing the security freeze and at the same time shall provide the consumer with a unique personal identification number, password, or similar device to be used by the consumer when providing authorization for a release of the consumer's credit for a specific party or period of time, as provided in 30-14-1729.

(4) A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report, or rating.

**History:** **En. Sec. 3, Ch. 138, L. 2007.**

**30-14-1729.** *(Temporary)* **Temporary lifting of security freeze — consumer requirements — consumer reporting agency duties — notification.** (1) A consumer who wishes to allow access to the consumer's own credit report by a specific party or for a specific period of time while a security freeze is in place shall contact each consumer reporting agency, using a point of contact designated by the consumer reporting agency by regular or certified mail, telephone, or a secure electronic connection, request that the security freeze be temporarily lifted, and provide all of the following:

(a) proper identification;

(b) the unique personal identification number, password, or device provided by the consumer reporting agency pursuant to 30-14-1728(3);

(c) the proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and

(d) a fee, if applicable.

(2) (a) Except as provided in subsection (2)(b), a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report as provided in subsection (1) shall comply with the request no later than 3 business days after receiving the request.

(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled.

(c) For the purposes of this section, "normal business hours" means from 6 a.m. to 9:30 p.m., mountain standard time or mountain daylight time, 7 days a week, excluding holidays.

(3) A consumer reporting agency shall:

(a) designate the contact address and telephone number along with a telefax number or appropriate electronic access address when providing the unique personal identification number, password, or other device as provided in 30-14-1728(3); and

(b) develop procedures to implement this section by January 31, 2009, involving the use of telephone, telefax, or electronic connection, using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze.

**30-14-1729.** *(Effective on occurrence of contingency)* **Temporary lifting of security freeze — consumer requirements — consumer reporting agency duties — notification.** (1) A consumer who wishes to allow access to the consumer's own credit report by a specific party or for a specific period of time while a security freeze is in place shall contact each consumer reporting agency, using a point of contact designated by the consumer reporting agency by regular or certified mail, telephone, or a secure electronic connection, request that the security freeze be temporarily lifted, and provide all of the following:

(a) proper identification;

(b) the unique personal identification number, password, or device provided by the consumer reporting agency pursuant to 30-14-1728(3);

(c) the proper information regarding the third party who is to receive the credit report or the time period for which the credit report is to be available to users of the credit report; and

(d) a fee, if applicable.

(2) (a) Except as provided in subsection (2)(b), a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report as provided in subsection (1) shall comply with the request no later than 3 business days after receiving the request.

(b) By no later than January 31, 2009, a consumer reporting agency shall honor a request for the temporary lifting of a security freeze made by telephone or through a secure electronic connection designated by the consumer reporting agency within 15 minutes of receiving the request unless one of the following circumstances applies:

(i) the consumer fails to meet the requirements of subsections (1)(a) through (1)(c); or

(ii) the consumer reporting agency's ability to remove the security freeze within 15 minutes is prevented by:

(A) a natural disaster or act of God, including fire, earthquake, or hurricane;

(B) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, or a labor strike or similar labor dispute disrupting operations;

(C) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, or computer hardware or software failures inhibiting response time;

(D) governmental action, including emergency orders or regulations or judicial or law enforcement action;

(E) receipt of a removal request outside of normal business hours; or

(F) maintenance of, updates to, or repair of the consumer reporting agency's systems, whether regularly scheduled or unexpected or unscheduled.

(c) For the purposes of this section, "normal business hours" means from 6 a.m. to 9:30 p.m., mountain daylight time, 7 days a week, excluding holidays.

(3) A consumer reporting agency shall:

(a) designate the contact address and telephone number along with a telefax number or appropriate electronic access address when providing the unique personal identification number, password, or other device as provided in 30-14-1728(3); and

(b) develop procedures to implement this section by January 31, 2009, involving the use of telephone, telefax, or electronic connection, using a process for legally required notices provided for in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001.

(4) Only the attorney general may enforce the provisions of this section related to a failure to comply with the 15-minute requirement for the temporary lifting of a security freeze.

**History:** **En. Sec. 4, Ch. 138, L. 2007; amd. Sec. 2, Ch. 447, L. 2021.**

**Compiler's Comments**

*Contingent Effective Date:* Section 6, Ch. 447, L. 2021, provided: "(1) [This act] is effective on the first Sunday of November following the day that the governor certifies to the code commissioner that:

(a) not fewer than four western states, including Montana, pass legislation to place all or a portion of those states on year-round daylight saving time, regardless of the time zone; and

(b) (i) legislation enacted by congress goes into effect to amend 15 U.S.C. 260a to authorize states to observe daylight saving time year-round; or

(ii) the United States department of transportation, pursuant to the department authority in 15 U.S.C. 260, et seq., approves the state's transfer from mountain standard time to central standard time.

(2) As used in this section, "western states" means the states of Idaho, Montana, North Dakota, South Dakota, Utah, and Wyoming."

**30-14-1730. Consumer reporting agency security freeze removal procedures — notification.** (1) A consumer reporting agency shall remove or temporarily lift a security freeze placed on a credit report:

(a) upon the consumer's request pursuant to 30-14-1729 or 30-14-1732; or

(b) if the consumer reporting agency determines that the consumer made a material misrepresentation of fact when requesting the security freeze.

(2) When a consumer reporting agency removes a security freeze as provided in subsection (1)(b), the consumer reporting agency shall notify the consumer in writing at least 5 business days prior to removing the security freeze on the credit report.

**History:** **En. Sec. 5, Ch. 138, L. 2007.**

**30-14-1731. Third-party contacts.** If a third party not enumerated in 30-14-1734(1) requests for the purpose of an application access to a credit report on which a security freeze is in effect and the consumer has not provided a temporary lifting of a security freeze for that specific party or a period of time, the third party may treat the application as incomplete.

**History:** **En. Sec. 6, Ch. 138, L. 2007.**

**30-14-1732. Security freeze removal procedure.** (1) A security freeze must remain in place until the consumer requests that the security freeze be removed or temporarily lifted as provided in 30-14-1729.

(2) After receiving a request from the consumer to remove a security freeze, a consumer reporting agency shall remove the security freeze within 3 business days of receiving a removal request at the point of contact designated by the consumer reporting agency if the consumer provides the following:

(a) proper identification; and

(b) the unique personal identification number, password, or other device provided by the consumer reporting agency pursuant to 30-14-1728(3).

**History: En. Sec. 7, Ch. 138, L. 2007.**

**30-14-1733. Notice of rights.** A consumer reporting agency shall provide a notice of rights as stated below at any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681(g) of the Fair Credit Reporting Act.

NOTICE OF RIGHTS: Montana Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to Montana law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within 5 business days you will be provided a personal identification number, password, or other device to use if you choose to remove the security freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties, or period of time after the security freeze is in place. To provide that authorization, you shall contact the consumer reporting agency and provide all of the following:

(1) the unique personal identification number, password, or other device provided by the consumer reporting agency;

(2) the proper identification to verify your identity;

(3) the proper information regarding the third party or parties who are to receive the credit report or the period of time for which the credit report is to be available to users of the credit report; and

(4) a fee, if applicable.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a credit report shall comply no later than 3 business days after receiving the request or, after January 31, 2009, within 15 minutes of receiving a request by telephone or through a secure electronic connection.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action may be brought against a consumer reporting agency or a user of your credit report.

**History: En. Sec. 8, Ch. 138, L. 2007.**

**30-14-1734. Exceptions — exemptions.** (1) The provisions of 30-14-1726 through 30-14-1733 and 30-14-1735 do not apply to the following for the purposes of accessing or using a credit report:

(a) a person or the person's subsidiary, affiliate, agent, or assignee with which the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship when using a credit report for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt;

(b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted to a credit report under 30-14-1729 for purposes of facilitating the extension of credit or other permissible use;

(c) any person using a credit report and acting pursuant to a court order, warrant, or subpoena;

(d) any federal, state, or local agency that administers a program for establishing and enforcing child support obligations;

(e) any federal, state, or local agency or its agents or assigns acting to investigate fraud;

(f) any federal, state, or local agency or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) a person for use of a credit report for the purpose of prescreening as described by the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(h) a person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

(i) a person or entity for the purpose of providing a consumer with a copy of the consumer's own credit report or score and upon the consumer's request;

(j) a person or entity regulated under Title 33; or

(k) a consumer reporting agency for its database or file that consists entirely of information concerning, and used solely for, one or more of the following:

(i) criminal record information;
(ii) tenant screening;
(iii) employment screening;
(iv) fraud prevention or detection; or
(v) personal loss history information.

(2) The following entities are exempt from placing a security freeze on a credit report:

(a) a check services company or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments;

(b) a deposit account information service company that issues reports regarding account closures because of fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(c) a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and that does not maintain a permanent database of credit information from which new credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a credit report by another consumer reporting agency.

**History:** **En. Sec. 9, Ch. 138, L. 2007.**

**30-14-1735. Fees.** (1) Except as provided in subsection (2), a consumer reporting agency may charge an administrative fee, not to exceed $3, to a consumer for each security freeze or temporary lifting of a security freeze as provided in 30-14-1729, but not for removal of a security freeze as provided in 30-14-1732.

(2) A consumer reporting agency may not charge a fee under 30-14-1728 to a consumer who has been the victim of identity theft and who has submitted to the consumer reporting agency a valid police report, an investigative report, or a complaint that the consumer has filed with a law enforcement agency.

(3) A consumer may be charged a reasonable fee, not to exceed $5, if the consumer fails to retain the original personal identification number, password, or other device provided by the consumer reporting agency and if the consumer asks the consumer reporting agency to reissue the same or a new personal identification number, password, or other device.

**History:** **En. Sec. 10, Ch. 138, L. 2007.**

**30-14-1736. Violations — penalties.** (1) A person who willfully fails to comply with any requirements imposed in 30-14-1727 through 30-14-1735 with respect to a consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(b) punitive damages in an amount that the court may allow; and

(c) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(2) A person who obtains a credit report or requests a security freeze, the temporary lifting of a security freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(3) A person who negligently fails to comply with any requirement imposed in 30-14-1727 through 30-14-1735 with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) any actual damages sustained by the consumer as a result of the failure; and

(b) the costs of the action together with reasonable attorney fees as determined by the court in the case of a successful action to enforce liability under this section.

(4) If a court finds that an unsuccessful pleading, motion, or other paper filed under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party reasonable attorney fees as determined by the court.

**History:** En. Sec. 11, Ch. 138, L. 2007.

## Parts 18 and 19 reserved

## Part 20

## Montana Consumer Debt Management Services Act

**30-14-2001. Short title.** This part may be cited as the "Montana Consumer Debt Management Services Act".

**History:** En. Sec. 1, Ch. 272, L. 2005.

**30-14-2002. Scope.** (1) The provisions of this part apply to any person that provides or offers to provide debt management plans to residents of this state.

(2) The provisions of this part do not apply to:

(a) banking institutions, as defined in 32-1-601, building and loan associations, credit unions, escrow businesses, as defined in 32-7-102, or title companies;

(b) the services of an attorney licensed to practice law in this state if providing credit counseling services is incidental to and not the principal business of the attorney;

(c) the services of a certified public accountant licensed to practice accounting in this state if providing credit counseling services is incidental to and not the principal business of the certified public accountant; and

(d) debt collectors that do not advertise or hold themselves out as a credit counseling service.

**History:** En. Sec. 2, Ch. 272, L. 2005.

**30-14-2003. Definitions.** As used in this part, the following definitions apply:

(1) "Consumer" means an individual who, singly or jointly with another individual, owes money to one or more creditors for personal, family, or household purposes.

(2) "Credit counseling service" means a person that provides or offers to provide debt management plan services to consumers for consideration.

(3) "Credit counselor" means a person who is an employee or agent of a credit counseling service and who designs debt management plans and provides consumers with budget, basic financial planning, and consumer education services.

(4) "Debt management plan" means a written agreement under which a credit counseling service is to receive money from a consumer for the purpose of distributing that money to one or more creditors of the consumer as full or partial payment of the consumer's obligation to the creditor or creditors.

(5) "Department" means the department of justice provided for in 2-15-2001.

(6) "Person" means an individual, sole proprietorship, firm, partnership, corporation, limited liability partnership or company, or other entity and includes a nonprofit organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(7) "Trust account" means an account:

(a) established by a credit counseling service in a federally insured financial institution;

(b) designated as a trust account or other appropriate designation indicating that the funds in the account are not funds of the credit counseling service or its directors, officers, employees, or agents;

(c) used exclusively for funds paid by consumers to the credit counseling service for disbursement to creditors of the consumers; and

(d) that is unavailable to creditors of the credit counseling service.

**History: En. Sec. 3, Ch. 272, L. 2005; amd. Sec. 30, Ch. 280, L. 2005.**

**30-14-2004. Requirements for licensure — fees — rulemaking authority — refusal to grant license — suspension or revocation of license — rules.** (1) A credit counseling service may not provide or offer to provide debt management plans or other consumer credit counseling services to the consumers of this state without first being licensed by the department.

(2) In order to obtain a license or annually renew a license, an applicant shall pay the required license fee as established by the department by rule. The fee must be in an amount commensurate with the cost of administering this part, and the applicant shall provide evidence:

(a) that it maintains a trust account for handling consumer funds;

(b) (i) that it has been accredited by a bona fide third-party accreditation provider that ensures compliance with industry standards and best practices; and

(ii) that its credit counselors have been certified by a bona fide third-party certification provider as possessing the competence to provide consumer credit counseling services;

(c) that a majority of its owners, principals, officers, board of directors, or employees are not persons who have a conflict of interest with the applicant's mission. Persons with a conflict of interest include creditors, creditors' representatives, bankruptcy attorneys, and other persons having a direct stake in the outcome of the consumer credit counseling process.

(d) that it has obtained a surety bond for the benefit of consumers harmed by a violation of the provisions of this part in an amount, form, and duration as required by the department by rule, except that an applicant that does not maintain an office in this state with a credit counselor on the premises shall post a surety bond in the amount of $50,000; and

(e) that it has contracted at its own expense for annual audits by an independent certified public accountant to be conducted within 6 months of the close of each of its fiscal years.

(3) An applicant for a license or license renewal shall provide any additional information that the department requires. The department shall adopt rules to implement the provisions of this section. The department shall designate by rule acceptable third-party accreditation and certification providers for purposes of subsection (2)(b).

(4) The department may refuse to grant a license to or suspend or revoke the license of any credit counseling service that fails to comply with the provisions of subsections (1) through (3) or any rules adopted pursuant to this section.

**History: En. Sec. 4, Ch. 272, L. 2005.**

**30-14-2005 through 30-14-2009 reserved.**

**30-14-2010. Requirements for debt management plans — rulemaking authority.** (1) A credit counseling service may not require or accept any consideration from a consumer for the provision of services or the offer to provide services unless a written and dated debt management plan meeting the requirements of this section has been signed by the consumer. A copy of the debt management plan must be provided to the consumer.

(2) The debt management plan must include the following:

(a) the name and principal business address of the credit counseling service and the name and address of the consumer;

(b) a full and detailed description of the services to be performed by the credit counseling service for the consumer;

(c) a clear statement of the costs to the consumer, including contributions or fees, highlighted in bold type;

(d) a statement, in a prominent location in the plan in at least 10-point bold type, that either party may cancel the agreement without penalty at any time upon 10 days' notice and that a consumer who cancels an agreement is entitled to a refund of all unexpended funds that the consumer has paid to the credit counseling service as of the date of the notice;

(e) a complete list of the obligations of each party that are subject to the terms of the agreement;

(f) an indication of how disputes are to be resolved; and

(g) a statement that the credit counseling service has a duty to advocate the interests of the consumer who is a party to the debt management plan and not promote the interests of any third party that is in conflict with the primary obligation of advocating the interests of the consumer.

(3) A credit counseling service shall provide each consumer who is a party to a debt management plan with a report that shows the funds received from the consumer since the last report and the disbursement of those funds made to each creditor of the consumer. The credit counseling service shall provide the reports to consumers on at least a quarterly basis.

(4) (a) A credit counseling service may not impose any fees or other charges on a consumer or receive any payment from a consumer or other person on behalf of a consumer except as allowed by this section.

(b) The fees or charges referred to in this subsection (4) include voluntary contributions and any other fees charged to or collected from a consumer or on behalf of a consumer.

(c) A credit counseling service may not charge an initial consultation fee that exceeds an amount set by the department by rule. The fee or portion of the fee may not be charged until the credit counseling service has complied with the provisions of this section.

(d) A credit counseling service may charge a monthly maintenance fee. In the absence of exceptional circumstances as defined in the department's rules, a credit counseling service may not have a total monthly fee in an amount that exceeds the amount set by the rules.

(e) A credit counseling service may not, as a condition of entering into a debt management plan, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies.

(f) Fees charged for services other than credit counseling services must be fair and reasonable.

(g) If the credit counseling service imposes any fee or other charge or receives any funds or other payments not authorized by this section, except as a result of a bona fide error, the debt management plan is void and the credit counseling service shall return to the consumer all fees received from or on behalf of the consumer.

(5) Credit counseling services are prohibited from using hold harmless clauses, confessions of judgment, and waivers of the right to jury trials in debt management plans.

(6) The department may promulgate rules as necessary to implement the provisions of this part, including setting fees.

**History:** **En. Sec. 5, Ch. 272, L. 2005.**

**30-14-2011 and 30-14-2012 reserved.**

**30-14-2013. Prohibited practices.** (1) A credit counseling service may not:

(a) purchase any debt or obligation of a consumer;

(b) lend money or provide credit to a consumer;

(c) obtain a mortgage or other security interest in any property of a consumer;

(d) operate as a collection agency;

(e) structure a debt management plan in a way that at the debt management plan's conclusion any debts of the consumer that are subject to the debt management plan are not fully amortized;

(f) charge for or provide credit insurance;

(g) cause or attempt to cause a consumer to waive or forego any right or benefit that the consumer has under the provisions of this part; or

(h) operate in this state without a license.

(2) (a) A credit counseling service may not advertise its services in any manner in this state without first being licensed by the department.

(b) A credit counseling service or any person on a credit counseling service's behalf may not misrepresent any material fact or make a false promise intended to induce a consumer into entering a debt management plan.

**History:** **En. Sec. 6, Ch. 272, L. 2005.**

**30-14-2014 reserved.**

**30-14-2015. Remedies — penalty.** (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any violation of this part constitutes an unfair or deceptive trade practice and is a violation of 30-14-103.

(3) A person found to have violated this part is liable to the person harmed for actual and consequential damages or $500, whichever is greater, for each violation, plus costs and attorney fees.

(4) A person harmed by a violation of this part may sue for injunctive and other appropriate equitable relief.

(5) A person harmed by a violation of this part may bring a class action suit.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

(7) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(8) A person engaged in credit counseling in this state without a license, a person who fails to maintain a separate trust account for consumer funds, or a person who fails to maintain any records required by the provisions of this part or by department rule shall be fined an amount not to exceed $5,000 for each violation.

**History: En. Sec. 7, Ch. 272, L. 2005.**

## Part 21
## Regulation of Debt Settlement Providers

**30-14-2101. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Debt settlement provider" means any person or entity engaging in or holding itself out as engaging in the business of debt settlement for compensation that does not in the usual and regular course of business hold, receive, or disburse a debtor's funds in connection with debt settlement services.

(b) The term does not include any of the following:

(i) attorneys, escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting in the ordinary practice of their professions;

(ii) any bank, agent of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, or insurance company operating or organized under the laws of this state, another state, or the United States, or any other person authorized to make loans under Montana law;

(iii) persons who perform credit services for their employer while receiving a regular salary or wage when the employer is not engaged in the business of debt settlement;

(iv) public officers while acting in their official capacities and persons acting under court order;

(v) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or

(vi) any for-profit or nonprofit entity that is subject to the provisions of Title 30, chapter 14, part 20, the Montana Consumer Debt Management Services Act.

(2) "Debt settlement service" is the negotiation, adjustment, or settlement of a consumer's debt without holding, receiving, or disbursing the debtor's funds.

(3) "Principal amount of the debt" means the total amount of debt of an individual at the time the individual is accepted into a debt settlement program.

**History: En. Sec. 1, Ch. 338, L. 2009.**

**30-14-2102. Requirements for debt settlement providers.** (1) (a) A debt settlement provider shall maintain insurance coverage for dishonesty, fraud, theft, and other misconduct on the part of directors, officers, employees, or agents that is issued by an insurer rated at least A- or its equivalent by a nationally recognized rating organization. The debt settlement provider shall, at the request of the attorney general, make available to the attorney general proof of the insurance coverage required by this subsection (1)(a).

(b) The insurance coverage must be in a minimum amount of $100,000 with a deductible of not more than $10,000. A debt settlement provider is required to give at least 30 days' advance written notice to the attorney general if the coverage is being replaced.

(2) (a) A debt settlement provider is required to maintain books and records in accordance with generally accepted accounting principles and file a financial statement annually with the attorney general. The attorney general may require an audit or review of the financial statement by an independent certified public accountant.

(b) The annual filing by the debt settlement provider must be accompanied by a filing fee of $250 and must include, in addition to the financial statement, the following:

(i) the name of the debt settlement provider;

(ii) the date of formation if the debt settlement provider is an entity;

(iii) the physical address of each location to be operated by the debt settlement provider;

(iv) the name and resident address of the owners or partners or, if the debt settlement provider is a corporation, limited liability company, or association, the name and resident address of officers, directors, trustees, and managers; and

(v) any other pertinent information required by the attorney general.

(c) Fees received pursuant to this section and any civil fines, fees, costs, or penalties received or recovered by the department of justice pursuant to 30-14-2104 must be deposited into a state special revenue account to the credit of the department of justice and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Civil penalties, costs, or settlements received by a county attorney must be paid to the general fund of the county in which any enforcement action was commenced.

(3) (a) A debt settlement provider shall disclose in writing to a debtor, prior to entering into an agreement to provide services to the debtor, that:

(i) there will be fees charged by the debt settlement provider and shall disclose the type and amount of all of those fees;

(ii) the settlement of debts through a debt settlement program might have an impact on the debtor's credit history;

(iii) there may be tax consequences for the debtor as a result of a debt settlement;

(iv) collection activity by the creditor for a debt may continue until the creditor accepts a settlement for that debt;

(v) any settlement amount is an estimate based on the experience of prior customers and is not guaranteed to be accepted by the creditor;

(vi) a creditor may not be forced to accept a proposed settlement;

(vii) the debtor is required to meet certain savings goals in order to maximize settlement opportunities;

(viii) the debt settlement provider does not provide legal, accounting, tax, or bankruptcy advice or assistance;

(ix) the debt settlement provider will not use a payment made by the debtor to make a payment to a creditor; and

(x) debt settlement may not be the only option available to the debtor.

(b) The written disclosure must be in a minimum size of 12-point type.

**History: En. Sec. 2, Ch. 338, L. 2009.**

**30-14-2103. Prohibitions — contract cancellation.** (1) A debt settlement provider may not do any of the following:

(a) provide debt settlement services without a written contract signed by the debtor;

(b) receive or charge fees, other than setup fees, in an aggregate amount that is in excess of 20% of the principal amount of the debt. No more than 5% of the principal amount of the debt may be charged as a setup fee.

(c) make loans or offer credit;

(d) take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor or on behalf of the debtor in any judicial proceedings;

(e) take as part of any agreement to provide debt settlement services a release of any obligation to be performed on the part of the debt settlement provider;

(f) advertise, display, distribute, broadcast, or televise services or permit services to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to the services to be performed or the fees to be charged by the debt settlement provider;

(g) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person on the debtor's behalf for performing debt settlement services;

(h) disclose to anyone the name or any personal information of a debtor for whom the debt settlement provider has provided or is providing debt settlement service other than a debtor's own creditors or the debt settlement provider's agents, affiliates, or contractors;

(i) disclose the name of a debtor's creditor to anyone other than the debtor, a company acting on behalf of the debtor or the debtor's debt settlement provider, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of a creditor in a debt settlement plan;

(j) enter into a contract with a debtor without first providing the disclosure required in 30-14-2102(3);

(k) collect fees until a written debt settlement services contract has been executed by the debtor containing a schedule of fees in the actual amount to be charged the debtor and stating when those fees will be charged;

(l) advertise services in any manner in this state without first filing a financial statement with the attorney general;

(m) misrepresent any material fact or make a false promise intended to convince a debtor to enter into a debt settlement plan; or

(n) violate the provisions of any applicable state or federal do-not-call registry or Title 30, chapter 14, part 5.

(2) If a debt settlement service contract is canceled by the debtor before the contract is completed, the debt settlement provider shall, on request of the debtor, refund 50% of any collected but unrefunded service fee on a pro rata basis for those accounts that have not received a settlement offer by the time of the cancellation. Fees associated with the setup of a debt settlement service contract are not required to be refunded.

**History: En. Sec. 3, Ch. 338, L. 2009.**

**30-14-2104. Remedies.** (1) The attorney general or the county attorney of any county in which a debt settlement provider is doing business or a debtor resides may bring an action for a violation of 30-14-2102 or 30-14-2103. Upon finding that a person has violated or is violating a provision of 30-14-2102 or 30-14-2103, a court may make any necessary order or judgment, including an injunction, restitution, and an award of reasonable attorney fees and costs for the investigation and litigation of the violations.

(2) The attorney general or county attorney may accept an assurance of discontinuance of any method, act, or practice that is in violation of the provisions of 30-14-2102 or 30-14-2103 from any person alleged to be engaged in the unlawful act. The assurance may include a stipulation for the voluntary payment of the costs of investigation or of an amount to be held in escrow pending the outcome of any action or as restitution for any aggrieved person, or both. The court may award to the state a civil penalty not exceeding $10,000 for any violation of an assurance of discontinuance. Any matter closed by the acceptance of an assurance may be reopened at any time.

(3) A violation of a provision of 30-14-2102 or 30-14-2103 is a violation of 30-14-103, and a debtor is entitled to any remedy available under the provisions of Title 30, chapter 14, part 1, or other applicable state law.

**History: En. Sec. 4, Ch. 338, L. 2009.**

## Part 22
## Guaranteed Asset Protection Waiver Act

**30-14-2201. Title — scope.** (1) This part may be cited as the "Guaranteed Asset Protection Waiver Act".

(2) The purpose of this part is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(3) This part does not apply to:

(a) an insurance policy offered by an insurer under the insurance laws of this state; or

(b) a debt cancellation or debt suspension contract being offered in compliance with 32-1-429, 32-3-609, 12 CFR, part 37 or part 721, or other federal law.

(4) Guaranteed asset protection waivers governed by this part are not insurance and are exempt from the insurance laws of this state. Persons that comply with this part in marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers are exempt from this state's insurance licensing requirements.

**History: En. Sec. 1, Ch. 313, L. 2013; Sec. 30-14-151, MCA 2015; redes. 30-14-2201 by Code Commissioner, 2017.**

**30-14-2202. Definitions.** As used in this part, the following definitions apply:

(1) "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(2) "Borrower" means a debtor, retail buyer, or lessee under a finance agreement.

(3) "Creditor" means:

(a) the lender in a loan or credit transaction;

(b) the lessor in a lease transaction;

(c) a retail dealer of motor vehicles that provides credit to buyers as part of a retail sale, provided that the dealer complies with the provisions of this part;

(d) the seller in commercial retail installment transactions; or

(e) the assignees of any of the persons set out in subsections (3)(a) through (3)(d) to whom the credit obligation is payable.

(4) "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) "Free look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower. The period of time may not be less than 30 days.

(6) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

(7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use, including but not limited to an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, and personal watercraft and a trailer used to transport a motorcycle, boat, camper, or personal watercraft.

(9) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

**History: En. Sec. 2, Ch. 313, L. 2013; Sec. 30-14-152, MCA 2015; redes. 30-14-2202 by Code Commissioner, 2017.**

**30-14-2203. Requirements for offering guaranteed asset protection waivers.** (1) GAP waivers may be offered, sold, or provided to borrowers in this state in compliance with this part.

(2) GAP waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. 1601, et. seq., must be separately stated and is not considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its GAP waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its GAP waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor or a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or retail dealer's obligations. However, retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to GAP waivers on leased vehicles.

(5) The GAP waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the term of credit, or the term of the related motor vehicle sale or lease may not be conditioned upon the purchase of a GAP waiver.

(7) A creditor that offers a GAP waiver shall report the sale of and forward funds received on all GAP waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program document.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

**History:** **En. Sec. 3, Ch. 313, L. 2013; Sec. 30-14-153, MCA 2015; redes. 30-14-2203 by Code Commissioner, 2017.**

**30-14-2204. Contractual liability or other insurance policies.** (1) Contractual liability or other insurance policies insuring GAP waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the GAP waivers issued by the creditor and purchased or held by the borrower.

(2) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a GAP waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for GAP waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

**History:** **En. Sec. 4, Ch. 313, L. 2013; Sec. 30-14-154, MCA 2015; redes. 30-14-2204 by Code Commissioner, 2017.**

**30-14-2205. Disclosures.** Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language, the following:

(1) the name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(2) the purchase price and the terms of the GAP waiver, including without limitation the requirements for protection, conditions, or exclusions associated with the GAP waiver;

(3) that the borrower may cancel the GAP waiver within a free look period as specified in the waiver and is entitled to a full refund of the purchase price so long as benefits have not been provided;

(4) the procedure the borrower must follow, if any, to obtain GAP waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(5) whether the GAP waiver may be canceled after the free look period and the conditions under which it may be canceled, including the procedures for requesting any refund due;

(6) that in order to receive any refund due in the event of a borrower's cancellation of the GAP waiver agreement or early termination of the finance agreement, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor,

administrator, or other party as specified in the GAP waiver. If a borrower is canceling the GAP waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator, or other party within 90 days of the occurrence of the event terminating the finance agreement.

(7) the methodology for calculating any refund of the unearned purchase price of the GAP waiver due in the event of cancellation of the GAP waiver or early termination of the finance agreement; and

(8) that the extension of credit, the terms of the credit, or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of the GAP waiver.

**History: En. Sec. 5, Ch. 313, L. 2013; Sec. 30-14-155, MCA 2015; redes. 30-14-2205 by Code Commissioner, 2017.**

**30-14-2206. Cancellation.** (1) Guaranteed asset protection waiver agreements may be cancelable or noncancelable after the free look period. GAP waivers must provide that if a borrower cancels a GAP waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price.

(2) If the borrower cancels the GAP waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower is entitled to a refund of any unearned portion of the purchase price of the GAP waiver unless the GAP waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator, or other party. If the borrower is canceling the GAP waiver due to the early termination of the finance agreement, the borrower shall provide a written request within 90 days of the event terminating the finance agreement.

(3) If the cancellation of a GAP waiver occurs as a result of a default under the finance agreement, the repossession of the motor vehicle associated with the finance agreement, or other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (4).

(4) A cancellation or termination refund under subsection (1), (2), or (3) may be applied by the creditor as a reduction of the amount owed under the finance agreement unless the borrower can show that the finance agreement has been paid in full.

**History: En. Sec. 6, Ch. 313, L. 2013; Sec. 30-14-156, MCA 2015; redes. 30-14-2206 by Code Commissioner, 2017.**

**30-14-2207. Commercial transactions exempted.** Sections 30-14-2203(3) and 30-14-2205 do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

**History: En. Sec. 7, Ch. 313, L. 2013; Sec. 30-14-157, MCA 2015; redes. 30-14-2207 by Code Commissioner, 2017.**

## Parts 23 and 24 reserved

## Part 25
## Motorsports Manufacturer Unfair Trade Practices

**30-14-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Actual price" means the price paid by a motorsports dealer to a motorsports manufacturer for a motorsports product less any pecuniary benefit relating to a motorsports product paid or credited by the motorsports manufacturer to the motorsports dealer or the ultimate purchaser of the motorsports product.

(2) "Confidential or proprietary information" means trade secrets as defined in 30-14-402 and includes business plans, marketing plans or strategies, customer lists, contracts, sales data, revenue, or other financial information.

(3) "Control" or "controlling" means:

(a) the possession of, title to, or control of 10% or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary; or

(b) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise.

(4) "Department" means the department of justice created in 2-15-2001.

(5) "Fleet" means a group of 15 or more new motorsports vehicles that are sold or leased by a motorsports dealer at one time under a single purchase or lease agreement for use as part of a fleet.

(6) "Motorsports dealer" means a new motor vehicle dealer as defined in 61-4-201 who sells motorsports vehicles.

(7) "Motorsports manufacturer" means a manufacturer, distributor, distributor branch, factory branch, or importer, as those terms are defined in 61-4-201, who sells motorsports vehicles to motorsports dealers within this state.

(8) "Motorsports vehicle" means a personal watercraft as defined in 61-1-101, a snowmobile as defined in 23-2-601, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, an off-highway vehicle as defined in 61-1-101, or quadricycle as defined in 61-1-101.

(9) "Operate" means to manage a motorsports dealership, whether directly or indirectly.

(10) "Own" or "ownership" means to hold the beneficial ownership of 1% or more of any class of equity interest in a motorsports dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(11) "Person" has the meaning provided in 30-14-102.

**History: En. Sec. 1, Ch. 152, L. 2007; amd. Sec. 1, Ch. 240, L. 2009; amd. Sec. 6, Ch. 47, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 47, L. 2025. Amendment effective October 1, 2025.

**30-14-2502.** *(Temporary)* **Unfair trade practices — relationship between motorsports manufacturers and motorsports dealers.** (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer may not:

(a) discriminate between motorsports dealers by:

(i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;

(ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

(iii) using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or

(iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers;

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

(iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;

(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;

(d) compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer;

(f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested;

(ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports manufacturer;

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;

(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or

(iv) any other act performed by the motorsports manufacturer;

(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of motorsports products;

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer;

(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;

(l) charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its motorsports dealers;

(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a promissory note and a security agreement given in connection with the sale of a motorsports vehicle, or a policy of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(o) require or coerce a motorsports dealer to grant the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place of business, or both;

(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days;

(s) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

(t) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana.

(2) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(a) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(b) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(c) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer. *(Terminates on occurrence of contingency—sec. 6(3), Ch. 240, L. 2009.)*

**30-14-2502.** *(Effective on occurrence of contingency)* **Unfair trade practices — relationship between motorsports manufacturers and motorsports dealers.** (1) In addition to the prohibited practices provided for in 30-14-103 and 61-4-208 and notwithstanding the terms of a franchise agreement, a motorsports manufacturer or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a motorsports manufacturer may not:

(a) discriminate between motorsports dealers by:

(i) selling or offering to sell a like motorsports vehicle to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer for the same model similarly equipped;

(ii) selling or offering to sell parts or accessories to one motorsports dealer at a lower actual price than the actual price offered to another motorsports dealer;

(iii) using a promotion plan, marketing plan, allocation plan, flooring assistance plan, or other similar device that results in a lower actual price on motorsports vehicles, parts, or accessories being charged to one motorsports dealer over another motorsports dealer; or

(iv) using a method of allocating, scheduling, or delivering new motorsports vehicles, parts, or accessories to its motorsports dealers that is not fair, reasonable, and equitable. Upon the request of a motorsports dealer, a motorsports manufacturer shall disclose in writing the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its motorsports dealers handling the same line or make of vehicles.

(b) give preferential treatment to some motorsports dealers over others by:

(i) refusing or failing to deliver to any of its motorsports dealers, in reasonable quantities and within a reasonable time after receipt of an order, any motorsports vehicle, parts, or accessories that are being delivered to other motorsports dealers;

(ii) requiring a motorsports dealer to purchase unreasonable advertising displays or other materials; or

(iii) requiring a motorsports dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of motorsports vehicles;

(c) except as provided in 61-4-208(3)(b) or (3)(c), compete with a motorsports dealer by acting in the capacity of a motorsports dealer or by owning, operating, or controlling, whether directly or indirectly, a motorsports dealership in this state;

(d) compete with a motorsports dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the motorsports manufacturer's new motorsports vehicle warranty and extended warranty. However, a motorsports manufacturer may own or operate a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the motorsports manufacturer.

(e) use confidential or proprietary information obtained from a motorsports dealer to unfairly compete with the motorsports dealer without the prior written consent of the motorsports dealer;

(f) coerce, threaten, intimidate, or require, either directly or indirectly, a motorsports dealer to:

(i) accept, buy, or order any motorsports vehicle, part, accessory, or any other commodity or service not voluntarily ordered or requested;

(ii) buy, order, or pay anything of value other than the purchase price in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(iii) enter into any agreement that violates this chapter; or

(iv) order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the motorsports vehicle as advertised by the motorsports manufacturer, except items that:

(A) have been voluntarily requested or ordered by the motorsports dealer; or

(B) are required by law;

(g) require a change or prevent or attempt to prevent a motorsports dealer from making reasonable changes in the capital structure or means of financing for a motorsports dealership if the motorsports dealer at all times meets reasonable, written, and uniformly applied capital standards determined by the motorsports manufacturer;

(h) fail to hold harmless and indemnify a motorsports dealer against losses, including attorney fees and costs incurred by a motorsports dealer, arising from:

(i) any lawsuit relating to the manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the motorsports manufacturer relating to the manufacture or performance of a motorsports vehicle, part, or accessory if there is no allegation of negligence on the part of the motorsports dealer;

(ii) damage to merchandise in transit when the motorsports manufacturer specifies the carrier;

(iii) the motorsports manufacturer's failure to jointly defend product liability suits concerning a motorsports vehicle, part, or accessory that the motorsports manufacturer provided to the motorsports dealer; or

(iv) any other act performed by the motorsports manufacturer;

(i) unfairly prevent or attempt to prevent a motorsports dealer from receiving reasonable compensation for the value of motorsports products;

(j) fail to pay to a motorsports dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the motorsports manufacturer;

(k) deny a motorsports dealer the right of free association with any other motorsports dealer for any lawful purpose;

(l) charge increased prices without having given written notice to the motorsports dealer at least 15 days before the effective date of the price increases;

(m) permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than its motorsports dealers;

(n) require or coerce a motorsports dealer to sell, assign, or transfer a retail sales installment contract or require the motorsports dealer to act as an agent for the motorsports manufacturer in the securing of a promissory note and a security agreement given in connection with the sale of a motorsports vehicle or a policy of insurance for a motorsports vehicle or condition delivery of any motorsports vehicle, parts, or accessories upon the motorsports dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(o) require or coerce a motorsports dealer to grant the motorsports manufacturer a right of first refusal or other preference to purchase the motorsports dealer's dealership or place of business, or both;

(p) deny a motorsports dealer the right of lawfully selling or offering to sell motorsports vehicles to customers who reside in another country;

(q) require a motorsports dealer to accept delivery of a number or percentage of motorsport vehicles during a specific period of a sales order;

(r) require a motorsports dealer to maintain an inventory in excess of the inventory needed for a period of 90 days;

(s) require that any arbitration proceedings or legal action between the parties take place in a venue other than the state of Montana;

(t) (i) offer a program where a Montana motorsports dealer would be eligible for a benefit or advantage that lowers the actual price of a motorsports vehicle, part, or accessory only if the motorsports dealer purchases from the motorsports manufacturer a quantity of motorsports vehicles, parts, or accessories as determined by the motorsports manufacturer unless:

(A) the motorsports dealer agrees in writing to the quantity of motorsports vehicles, parts, or accessories to be purchased as determined by the motorsports manufacturer; or

(B) the quantity determined by the motorsports manufacturer for each motorsports dealer is reasonable, fair, and equitable based upon the motorsports dealer's purchase history, the history of motorsports sales in the motorsports dealer's community, the motorsports dealer's present inventory of similar motorsports vehicles, parts, and accessories, the market conditions as of the effective date of the offer, and all other factors that are brought to the attention of the motorsports manufacturer by the motorsports dealer. For each offer to which this subsection (1)(t) applies, the motorsports manufacturer shall, if requested, provide the motorsports dealer with a statement in writing specifying the sales goal or objective relating to the offer for each of the motorsports manufacturer's Montana motorsports dealers, identifying each factor that was considered in determining each Montana motorsports dealer's sales goal and objective, and explaining how each factor was evaluated and applied in determining the sales goal or objective for each Montana motorsports dealer.

(ii) For the purposes of this subsection (1)(t), "community" has the meaning provided in 61-4-201.

(u) refuse to allocate, sell, or deliver motorsports vehicles, may not charge back or withhold payments or other things of value for which the motorsports dealer is otherwise eligible under a sales promotion, program, or contest, and may not prevent the motorsports dealer from participating in any promotion, program, or contest based on the motorsports dealer's selling of a motorsports vehicle to a customer who was present at the dealership if the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country. There is a rebuttable presumption that the motorsports dealer did not know or could not have reasonably known that the motorsports vehicle would be shipped to a foreign country if the motorsports vehicle is titled in the United States.

(2) (a) Subsection (1)(a) does not apply to a sale to a motorsports dealer for resale to a federal, state, or local governmental agency if:

(i) the motorsports vehicle will be sold or donated for use in a program of driver's education;

(ii) the sale is made under a manufacturer's bona fide fleet vehicle discount program; or

(iii) the sale is made under a volume discount program that is uniformly available to all the motorsports dealers of a motorsports manufacturer.

(b) Subsection (1)(a) does not apply to sales to a motorsports dealer pursuant to a motorsports manufacturer's promotional or incentive program under which eligibility for any benefit or advantage that would reduce the actual price of motorsports products to a motorsports dealer is determined based on the motorsports dealer meeting any sales goals or objectives if the motorsports dealer agrees in writing with the sales goals or objectives or the sales goals or objectives are reasonable, fair, and equitable and meet all of the requirements of subsection (1)(t).

**History: En. Sec. 2, Ch. 152, L. 2007; amd. Secs. 2, 3, Ch. 240, L. 2009; amd. Sec. 1, Ch. 93, L. 2017.**

**Compiler's Comments**

*Effective Date — Contingent Effective Date — Contingent Termination Date:* Section 6, Ch. 240, L. 2009, provided "(1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 3] [30-14-2502 version effective on occurrence of contingency] is effective contingent upon a final court ruling that [section 2(1)(a)] [30-14-2501(1)(a)] is invalid or unconstitutional. If [section 2(1)(a)] [30-14-2501(1)(a)] is found to be invalid or unconstitutional, the department of justice shall notify the code commissioner when the contingency has been met.

(3) [Section 2] [30-14-2502 temporary version] terminates if [section 2(1)(a)] [30-14-2502(1)(a)] is found to be invalid or unconstitutional as provided for in subsection (2)."

**30-14-2503. Injunction — damages.** (1) A motorsports dealer may maintain an action to enjoin the continuance of any act in violation of the provisions of 30-14-2502 and to recover damages. A court, upon finding that the motorsports manufacturer is violating or has violated the provisions of 30-14-2502, shall enjoin the motorsports manufacturer from continuing the violation. To obtain an injunction it is not necessary for the motorsports dealer to allege or prove actual damages arising from the violation.

(2) In addition to injunctive relief, any motorsports dealer who incurs pecuniary loss due to a violation of 30-14-2502 by a motorsports manufacturer is entitled to recover three times the pecuniary loss together with costs, including attorney fees.

(3) A violation of 30-14-2502 also constitutes a violation of 30-14-103, and the department may bring an action to restrain any unlawful act pursuant to the provisions of 30-14-111.

**History:** **En. Sec. 3, Ch. 152, L. 2007; amd. Sec. 4, Ch. 240, L. 2009.**

## Part 26
## Credit Report Submission Prohibitions

**30-14-2601. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Ambulance service" means a person licensed under 50-6-306 who provides ground or air ambulance transport.

(2) "Consumer reporting agency" has the meaning provided in 30-14-1726.

(3) "Credit report" has the meaning provided in 30-14-1726.

(4) "Health plan" means the group insurance program authorized by Title 2, chapter 18, part 7, state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13.

(5) "Insurance plan" has the meaning of "health insurance coverage" under 33-22-140.

(6) "Insurer" has the meaning of a health insurance issuer as provided in 33-22-140.

**History:** **En. Sec. 1(3), Ch. 315, L. 2017.**

**30-14-2602. Balance billing information — notification to ambulance companies.** (1) (a) Subject to one of the conditions under subsection (1)(b), an ambulance service licensed in this state may not submit to a consumer reporting agency information intended to affect a patient's credit report because the patient has not made full payment of a bill for ambulance services.

(b) The prohibition under subsection (1)(a) is effective if:

(i) the patient's insurer or health plan has paid for the ambulance services based on the in-network or out-of-network charges outlined in the patient's insurance plan; or

(ii) an uninsured patient has paid toward the bill and filed with the attorney general's office a complaint regarding the bill as being an unfair trade practice because the bill is not based on usual and customary charges in the state.

(2) An ambulance service that transfers a bill to a collection agency shall state that the collection agency may not report as delinquent to a consumer reporting agency a bill covered by subsection (1).

**History:** **En. Sec. 1(1), (2), Ch. 315, L. 2017.**

## Part 27
## Electrical Generation Facility Ownership Agreements

**30-14-2701. Definitions.** As used in 30-14-2702 and this section, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of justice.

(2) "Electrical generation facility" has the meaning provided for in 75-20-104.

(3) "Generating unit" means an individual unit of an electrical generation facility located in the state.

(4) (a) "Operating costs" means the costs to construct, operate, and maintain the electrical generation facility in accordance with prudent utility practices.

(b) The term includes, without limitation, expenditures for capital improvements or replacements, maintenance activities, operations activities, environmental remediation, and pension and other employee benefits.

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) (a) "Prudent utility practice" means, at any particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior to practice or approval, or any of the practices, methods, or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition.

(b) The term is not limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts.

(c) The term also includes those practices, methods, and acts that are required in accordance with applicable laws, final orders, or regulations by regulatory agencies with jurisdiction.

**History:** **En. Sec. 1, Ch. 377, L. 2021.**

**30-14-2702. Unfair or deceptive acts or practices — ownership agreement.** (1) (a) The failure or refusal of an owner of a jointly owned electrical generation facility in the state to fund its share of operating costs associated with a jointly owned electrical generation facility is an unfair or deceptive act or practice in the conduct of trade or commerce in accordance with 30-14-103.

(b) Conduct by one or more owners of a jointly owned electrical generation facility in the state to bring about permanent closure of a generating unit of a facility without seeking and obtaining the consent of all co-owners of a generating unit is an unfair or deceptive act or practice in the conduct of trade or commerce in accordance with 30-14-103.

(2) (a) As an exclusive remedy for a violation of this section, whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice provided for in subsection (1) as an unfair or deceptive act or practice in the conduct of trade or commerce within the meaning of 30-14-103 and that proceeding would be in the public interest, the department may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the unlawful method, act, or practice after giving appropriate notice to that person.

(b) In an action brought under this section, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by this section, the department may, on petition to the court, recover on behalf of the state a civil fine of not more than $100,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(3) There is no implied private right of action for a violation of this section, either under this section or in law.

(4) All legal actions under this section must be brought in the county in which the electrical generation facility is located.

**History:** **En. Sec. 2, Ch. 377, L. 2021.**

## Part 28

## Consumer Data Privacy Act

**30-14-2801. Short title.** This part may be cited as the "Consumer Data Privacy Act".

**History:** **En. Sec. 1, Ch. 681, L. 2023.**

**30-14-2802. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Affiliate" means a legal entity that shares common branding with another legal entity or controls, is controlled by, or is under common control with another legal entity.

(3) "Authenticate" means to use reasonable methods to determine that a request to exercise any of the rights afforded under 30-14-2808(1)(a) through (1)(e) is being made by, or on behalf of, the consumer who is entitled to exercise these consumer rights with respect to the personal data at issue.

(4) (a) "Biometric data" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that are used to identify a specific individual.

(b) The term does not include:

(i) a digital or physical photograph;

(ii) an audio or video recording; or

(iii) any data generated from a digital or physical photograph or an audio or video recording, unless that data is generated to identify a specific individual.

(5) "Child" means an individual under 13 years of age.

(6) (a) "Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to allow the processing of personal data relating to the consumer. The term may include a written statement, a statement by electronic means, or any other unambiguous affirmative action.

(b) The term does not include:

(i) acceptance of a general or broad term of use or similar document that contains descriptions of personal data processing along with other unrelated information;

(ii) hovering over, muting, pausing, or closing a given piece of content; or

(iii) an agreement obtained using dark patterns.

(7) (a) "Consumer" means an individual who is a resident of this state.

(b) The term does not include an individual acting in a commercial or employment context or as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency whose communications or transactions with the controller occur solely within the context of that individual's role with the company, partnership, sole proprietorship, nonprofit, or government agency.

(8) "Control" or "controlled" means:

(a) ownership of or the power to vote more than 50% of the outstanding shares of any class of voting security of a company;

(b) control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(c) the power to exercise controlling influence over the management of a company.

(9) "Controller" means an individual who or legal entity that, alone or jointly with others, determines the purpose and means of processing personal data.

(10) "Dark pattern" means a user interface designed or manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice.

(11) "Decisions that produce legal or similarly significant effects concerning the consumer" means decisions made by the controller that result in the provision or denial by the controller of financial or lending services, housing, insurance, education enrollment or opportunity, criminal justice, employment opportunities, health care services, or access to necessities such as food and water.

(12) "De-identified data" means data that cannot be used to reasonably infer information about or otherwise be linked to an identified or identifiable individual or a device linked to the individual if the controller that possesses the data:

(a) takes reasonable measures to ensure that the data cannot be associated with an individual;

(b) publicly commits to process the data in a de-identified fashion only and to not attempt to re-identify the data; and

(c) contractually obligates any recipients of the data to satisfy the criteria set forth in subsections (12)(a) and (12)(b).

(13) "Heightened risk of harm to minors" means processing the personal data of a minor in a manner that presents a reasonably foreseeable risk that could cause:

(a) unfair or deceptive treatment of or an unlawful disparate impact on a minor;

(b) financial, physical, or reputational injury to a minor;

(c) unauthorized disclosure of the personal data of a minor as a result of a security breach as described in 30-14-1704; or

(d) physical or other intrusion on the solitude or seclusion or the private affairs or concerns of a minor if the intrusion would be considered offensive to a reasonable person.

(14) "Identified or identifiable individual" means an individual who can be readily identified, directly or indirectly.

(15) "Institution of higher education" means any individual who or school, board, association, limited liability company, or corporation that is licensed or accredited to offer one or more programs of higher learning leading to one or more degrees.

(16) "Minor" means a consumer who is under 18 years of age.

(17) "Nonprofit organization" means any organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6) or 501(c)(12) of the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States as amended from time to time.

(18) (a) "Online service, product, or feature" means a service, product, or feature that is provided online.

(b) The term does not include:

(i) a telecommunications service as defined in 47 U.S.C. 153(53), as amended;

(ii) broadband internet access service as defined in 47 CFR 54.400(l), as amended; or

(iii) the delivery or use of a physical product.

(19) (a) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable individual.

(b) The term does not include de-identified data or publicly available information.

(20) (a) "Precise geolocation data" means information derived from technology, including but not limited to global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of 1,750 feet.

(b) The term does not include the content of communications or any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

(21) "Process" or "processing" means any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(22) "Processor" means an individual who or legal entity that processes personal data on behalf of a controller.

(23) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(24) "Protected health information" has the same meaning as provided in the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996.

(25) "Pseudonymous data" means personal data that cannot be attributed to a specific individual without the use of additional information, provided the additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data is not attributed to an identified or identifiable individual.

(26) "Publicly available information" means information that:

(a) is lawfully made available through federal, state, or municipal government records or widely distributed media; or

(b) a controller has a reasonable basis to believe a consumer has lawfully made available to the public.

(27) (a) "Sale of personal data" means the exchange of personal data for monetary or other valuable consideration by the controller to a third party.

(b) The term does not include:

(i) the disclosure of personal data to a processor that processes the personal data on behalf of the controller;

(ii) the disclosure of personal data to a third party for the purposes of providing a product or service requested by the consumer;

(iii) the disclosure or transfer of personal data to an affiliate of the controller;

(iv) the disclosure of personal data in which the consumer directs the controller to disclose the personal data or intentionally uses the controller to interact with a third party;

(v) the disclosure of personal data that the consumer:

(A) intentionally made available to the public via a channel of mass media; and

(B) did not restrict to a specific audience; or

(vi) the disclosure or transfer of personal data to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller's assets.

(28) "Sensitive data" means personal data that includes:

(a) data revealing racial or ethnic origin, religious beliefs, a mental or physical health condition or diagnosis, information about a person's sex life, sexual orientation, or citizenship or immigration status;

(b) the processing of genetic or biometric data for the purpose of uniquely identifying an individual;

(c) personal data collected from a known child; or

(d) precise geolocation data.

(29) (a) "Targeted advertising" means displaying advertisements to a consumer in which the advertisement is selected based on personal data obtained or inferred from that consumer's activities over time and across nonaffiliated internet websites or online applications to predict the consumer's preferences or interests.

(b) The term does not include:

(i) advertisements based on activities within a controller's own internet websites or online applications;

(ii) advertisements based on the context of a consumer's current search query or visit to an internet website or online application;

(iii) advertisements directed to a consumer in response to the consumer's request for information or feedback; or

(iv) processing personal data solely to measure or report advertising frequency, performance, or reach.

(30) "Third party" means an individual or legal entity, such as a public authority, agency, or body, other than the consumer, controller, or processor or an affiliate of the controller or processor.

(31) "Trade secret" has the same meaning as provided in 30-14-402.

**History: En. Sec. 2, Ch. 681, L. 2023; amd. Sec. 2, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2803. Applicability.** (1) The provisions of this part, excluding 30-14-2811, 30-14-2818, and 30-14-2819, apply to persons that conduct business in this state or persons that produce products or services that are targeted to residents of this state and:

(a) control or process the personal data of not less than 25,000 consumers, excluding personal data controlled or processed solely for the purpose of completing a payment transaction; or

(b) control or process the personal data of not less than 15,000 consumers and derive more than 25% of gross revenue from the sale of personal data.

(2) Sections 30-14-2811, 30-14-2818, and 30-14-2819 apply to persons that conduct business in this state or deliver commercial products or services that are intentionally targeted to residents of this state.

**History: En. Sec. 3, Ch. 681, L. 2023; amd. Sec. 3, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2804. Exemptions.** (1) This part does not apply to any:

(a) body, authority, board, bureau, commission, district, or agency of this state or any political subdivision of this state;

(b) nonprofit organization that is established to detect and prevent fraudulent acts in connection with insurance;

(c) institution of higher education;

(d) national securities association that is registered under 15 U.S.C. 78o-3 of the federal Securities Exchange Act of 1934, as amended;

(e) state or federally chartered bank or credit union or an affiliate or subsidiary that is principally engaged in financial activities as described in 12 U.S.C. 1843(k);

(f) personal data collected, processed, sold, or disclosed in accordance with, Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq.;

(g) covered entity or business associate as defined in the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR 160.103; or

(h) insurer as defined in 33-1-201, an insurance producer as defined in 33-17-102, a third-party administrator of self-insurance, or an affiliate or subsidiary of an entity identified in this subsection (1)(h) that is principally engaged in financial activities as described in 12 U.S.C. 1843(k), except that this subsection (1)(h) does not apply to a person who, alone or in combination with another person, establishes and maintains a self-insurance program that does not otherwise engage in the business of entering into policies of insurance.

(2) Information and data exempt from this part include:

(a) protected health information under the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996;

(b) patient-identifying information for the purposes of 42 U.S.C. 290dd-2;

(c) identifiable private information for the purposes of the federal policy for the protection of human subjects of 1991, 45 CFR, part 46;

(d) identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by the international council for harmonisation of technical requirements for pharmaceuticals for human use;

(e) the protection of human subjects under 21 CFR, parts 6, 50, and 56, or personal data used or shared in research as defined in the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR 164.501, that is conducted in accordance with the standards set forth in this subsection (2)(e), or other research conducted in accordance with applicable law;

(f) information and documents created for the purposes of the Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101, et seq.;

(g) patient safety work products for the purposes of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b-21, et seq., as amended;

(h) information derived from any of the health care-related information listed in this subsection (2) that is:

(i) de-identified in accordance with the requirements for de-identification pursuant to the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996; or

(ii) included in a limited data set as described in 45 CFR 164.514(e), to the extent that the information is used, disclosed, and maintained in a manner specified in 45 CFR 164.514(e);

(i) information originating from and intermingled to be indistinguishable with or information treated in the same manner as information exempt under this subsection (2) that is maintained by a covered entity or business associate as defined in the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR 160.103, or a program or qualified service organization, as specified in 42 U.S.C. 290dd-2, as amended;

(j) information used for public health activities and purposes as authorized by the federal Health Insurance Portability and Accountability Act of 1996, community health activities, and population health activities;

(k) the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, furnisher, or user that provides information for use in a consumer report and by a user of a consumer report, but only to the extent that the activity is regulated by and authorized under the Fair Credit Reporting Act, 15 U.S.C. 1681, as amended;

(l) personal data collected, processed, sold, or disclosed in compliance with the Driver's Privacy Protection Act of 1994, 18 U.S.C. 2721, et seq., as amended;

(m) personal data regulated by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, et seq., as amended;

(n) personal data collected, processed, sold, or disclosed in compliance with the Farm Credit Act of 1993, 12 U.S.C. 2001, et seq., as amended;

(o) data processed or maintained:

(i) by an individual applying to, employed by, or acting as an agent or independent contractor of a controller, processor, or third party to the extent that the data is collected and used within the context of that role;

(ii) as the emergency contact information of an individual under this part and used for emergency contact purposes; or

(iii) that is necessary to retain to administer benefits for another individual relating to the individual who is the subject of the information under subsection (2)(a) and is used for the purposes of administering the benefits; and

(p) personal data collected, processed, sold, or disclosed in relation to price, route, or service, as these terms are used in the Airline Deregulation Act of 1978, 49 U.S.C. 40101, et seq., as amended, by an air carrier subject to the Airline Deregulation Act of 1978, to the extent this part is preempted by the Airline Deregulation Act of 1978, 49 U.S.C. 41713, as amended.

(3) Controllers and processors that comply with the verifiable parental consent requirements of the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq., shall be considered compliant with any obligation to obtain parental consent pursuant to this part.

**History:** **En. Sec. 4, Ch. 681, L. 2023; amd. Sec. 4, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2805 through 30-14-2807 reserved.**

**30-14-2808. Consumer personal data — opt-out — compliance — appeals.** (1) A consumer must have the right to:

(a) confirm whether a controller is processing the consumer's personal data and access the consumer's personal data, unless such confirmation or access would require the controller to reveal a trade secret;

(b) correct inaccuracies in the consumer's personal data, considering the nature of the personal data and the purposes of the processing of the consumer's personal data;

(c) delete personal data about the consumer;

(d) obtain a copy of the consumer's personal data previously provided by the consumer to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the personal data to another controller without hindrance when the processing is carried out by automated means, provided the controller is not required to reveal any trade secret; and

(e) opt out of the processing of the consumer's personal data for the purposes of:

(i) targeted advertising;

(ii) the sale of the consumer's personal data, except as provided in 30-14-2812(2); or

(iii) profiling in furtherance of automated decisions that produce legal or similarly significant effects concerning the consumer.

(2) A consumer may exercise rights under this section by a secure and reliable means established by the controller and described to the consumer in the controller's privacy notice.

(3) (a) A consumer may designate an authorized agent in accordance with 30-14-2809 to exercise the rights of the consumer to opt out of the processing of the consumer's personal data under subsection (1)(e) on behalf of the consumer.

(b) A parent or legal guardian of a known child may exercise the consumer rights on the known child's behalf regarding the processing of personal data.

(c) A guardian or conservator of a consumer subject to a guardianship, conservatorship, or other protective arrangement, may exercise the rights on the consumer's behalf regarding the processing of personal data.

(4) Except as otherwise provided in this part, a controller shall comply with a request by a consumer to exercise the consumer rights authorized pursuant to this section as follows:

(a) A controller shall respond to the consumer without undue delay, but not later than 45 days after receipt of the request. The controller may extend the response period by 45 additional days when reasonably necessary, considering the complexity and number of the consumer's requests, provided the controller informs the consumer of the extension within the initial 45-day response period and the reason for the extension.

(b) If a controller declines to act regarding the consumer's request, the controller shall inform the consumer without undue delay, but not later than 45 days after receipt of the request, of the justification for declining to act and provide instructions for how to appeal the decision.

(c) Information provided in response to a consumer request must be provided by a controller, free of charge, once for each consumer during any 12-month period. If requests from a consumer are manifestly unfounded, excessive, technically infeasible, or repetitive, the controller may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or decline to act on the request. The controller bears the burden of demonstrating the manifestly unfounded, excessive, technically infeasible, or repetitive nature of the request.

(d) If a controller is unable to authenticate a request to exercise any of the rights afforded under subsections (1)(a) through (1)(d) of this section using commercially reasonable efforts, the controller may not be required to comply with a request to initiate an action pursuant to this section and shall provide notice to the consumer that the controller is unable to authenticate the request to exercise the right or rights until the consumer provides additional information reasonably necessary to authenticate the consumer and the consumer's request to exercise the consumer's rights. A controller may not be required to authenticate an opt-out request, but a controller may deny an opt-out request if the controller has a good faith, reasonable, and documented belief that the request is fraudulent. If a controller denies an opt-out request because the controller believes the request is fraudulent, the controller shall send notice to the person who made the request disclosing that the controller believes the request is fraudulent and that the controller may not comply with the request.

(e) A controller that has obtained personal data about a consumer from a source other than the consumer must be deemed in compliance with the consumer's request to delete the consumer's data pursuant to subsection (1)(c) by:

(i) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the controller's records and not using the retained data for any other purpose pursuant to the provisions of this part; or

(ii) opting the consumer out of the processing of the consumer's personal data for any purpose except for those exempted pursuant to the provisions of this part.

(5) A controller shall establish a process for a consumer to appeal the controller's refusal to act on a request within a reasonable period after the consumer's receipt of the decision. The appeal process must be conspicuously available and like the process for submitting requests to initiate action pursuant to this section. Not later than 60 days after receipt of an appeal, a controller shall inform the consumer in writing of any action taken or not taken in response to the appeal, including a written explanation of the reasons for the decisions. If the appeal is denied, the controller shall also provide the consumer with an online mechanism, if available, or other method through which the consumer may contact the attorney general to submit a complaint.

(6) In response to a consumer request under subsection (1)(a), a controller may not disclose the following information about a consumer but shall inform the consumer instead with sufficient particularity that the controller has collected this information:

(a) social security number;

(b) driver's license number or other government-issued identification number;

(c) financial account number;

(d) health insurance account number or medical identification number;

(e) account password, security questions, or answer; or

(f) biometric data.

**History: En. Sec. 5, Ch. 681, L. 2023; amd. Sec. 5, Ch. 567, L. 2025.**

**Compiler's Comments**
*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2809. Authorized agent.** (1) A consumer may designate another person to serve as the consumer's authorized agent and act on the consumer's behalf to opt out of the processing of the consumer's personal data for one or more of the purposes specified in 30-14-2808(1)(e). The consumer may designate an authorized agent by way of a technology, including but not limited to an internet link or a browser setting, browser extension, or global device setting indicating a customer's intent to opt out of such processing.

(2) A controller shall comply with an opt-out request received from an authorized agent if the controller is able to verify, with commercially reasonable effort, the identity of the consumer and the authorized agent's authority to act on the consumer's behalf.

(3) Opt-out methods must:

(a) provide a clear and conspicuous link on the controller's internet website to an internet web page that enables a consumer, or an agent of the consumer, to opt out of the targeted advertising or sale of the consumer's personal data; and

(b) by no later than January 1, 2025, allow a consumer to opt out of any processing of the consumer's personal data for the purposes of targeted advertising, or any sale of such personal data through an opt-out preference signal sent with the consumer's consent, to the controller by a platform, technology, or mechanism that:

(i) may not unfairly disadvantage another controller;

(ii) may not make use of a default setting, but require the consumer to make an affirmative, freely given and unambiguous choice to opt out of any processing of a customer's personal data pursuant to this part;

(iii) must be consumer-friendly and easy to use by the average consumer;

(iv) must be consistent with any federal or state law or regulation; and

(v) must allow the controller to accurately determine whether the consumer is a resident of the state and whether the consumer has made a legitimate request to opt out of any sale of a consumer's personal data or targeted advertising.

(4) (a) If a consumer's decision to opt out of any processing of the consumer's personal data for the purposes of targeted advertising, or any sale of personal data, through an opt-out preference signal sent in accordance with the provisions of subsection (3) conflicts with the consumer's existing controller-specific privacy setting or voluntary participation in a controller's bona fide loyalty, rewards, premium features, discounts, or club card program, the controller shall comply with the consumer's opt-out preference signal but may notify the consumer of the conflict and provide the choice to confirm controller-specific privacy settings or participation in such a program.

(b) If a controller responds to consumer opt-out requests received in accordance with subsection (3) by informing the consumer of a charge for the use of any product or service, the controller shall present the terms of any financial incentive offered pursuant to subsection (3) for the retention, use, sale, or sharing of the consumer's personal data.

**History: En. Sec. 6, Ch. 681, L. 2023.**

**30-14-2810 reserved.**

**30-14-2811. Duties of controllers — duty of care — rebuttable presumption.** (1) (a) A controller that offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor shall use reasonable care to avoid a heightened risk of harm to minors caused by the online service, product, or feature.

(b) In an enforcement action brought by the attorney general pursuant to 30-14-2817, there is a rebuttable presumption that a controller used reasonable care as required under this section if the controller complied with this section.

(2) Unless a controller has obtained consent in accordance with subsection (3), a controller that offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor may not:

(a) process a minor's personal data:

(i) for the purposes of:

(A) targeted advertising;

(B) the sale of personal data; or

(C) profiling in furtherance of decisions that produce legal or similarly significant effects concerning a consumer;

(ii) for any processing purpose other than the processing purpose that the controller disclosed at the time the controller collected the minor's personal data or that is reasonably necessary for and compatible with the processing purpose that the controller disclosed at the time the controller collected the minor's personal data; or

(iii) for longer than is reasonably necessary to provide the online service, product, or feature;

(b) use a system design feature to significantly increase, sustain, or extend a minor's use of the online service, product, or feature; or

(c) collect a minor's precise geolocation data unless:

(i) the minor's precise geolocation data is reasonably necessary for the controller to provide the online service, product, or feature;

(ii) the controller only collects and retains the minor's precise geolocation data for the time necessary to provide the online service, product, or feature; and

(iii) the controller provides to the minor a signal indicating that the controller is collecting the minor's precise geolocation data and makes the signal available to the minor for the entire duration of the collection of the minor's precise geolocation data. This subsection (2)(c)(iii) does not apply to a service or application that is used by and under the direction of a ski area operator.

(3) (a) A controller may not engage in the activities described in subsection (2) unless the controller obtains:

(i) the minor's consent; or

(ii) if the minor is a child, the consent of the minor's parent or legal guardian. A controller that complies with the verifiable parental consent requirements established in the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq., as amended, and the regulations, rules, guidance, and exemptions adopted pursuant to this act, as amended, is considered to have satisfied any requirement to obtain parental consent under this subsection (3)(a)(ii).

(b) (i) A controller that offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor may not:

(A) provide a consent mechanism that is designed to substantially subvert or impair or is manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice; or

(B) except as provided in subsection (3)(b)(ii), offer a direct messaging apparatus for use by a minor without providing readily accessible and easy-to-use safeguards to limit the ability of an adult to send unsolicited communications to the minor with whom the adult is not connected.

(ii) Subsection (3)(b)(i)(B) does not apply to an online service, product, or feature of which the predominant or exclusive function is:

(A) electronic mail; or

(B) direct messaging consisting of text, photos, or videos that are sent between devices by electronic means in which messages are:

(I) shared between the sender and the recipient;

(II) only visible to the sender and the recipient; and

(III) not posted publicly.

(4) Subsections (2)(a) and (2)(b) do not apply to a service or application that is used by and under the direction of an educational entity, including a learning management system or a student engagement program.

**History: En. Sec. 9, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-14-2812. Data processing by controller — limitations.** (1) A controller shall:

(a) limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which the personal data is processed, as disclosed to the consumer;

(b) establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data appropriate to the volume and nature of the personal data at issue; and

(c) provide an effective mechanism for a consumer to revoke the consumer's consent under this section that is at least as easy as the mechanism by which the consumer provided the consumer's consent and, on revocation of the consent, cease to process the personal data as soon as practicable, but not later than 45 days after the receipt of the request.

(2) A controller may not:

(a) except as otherwise provided in this part, process personal data for purposes that are not reasonably necessary to or compatible with the disclosed purposes for which the personal data is processed as disclosed to the consumer unless the controller obtains the consumer's consent;

(b) process sensitive data concerning a consumer without obtaining the consumer's consent or, in the case of the processing of sensitive data concerning a known child, without processing the sensitive data in accordance with the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq.;

(c) process personal data in violation of the laws of this state and federal laws that prohibit unlawful discrimination against consumers;

(d) process the personal data of a consumer for the purposes of targeted advertising or sell the consumer's personal data without the consumer's consent under circumstances in which a controller has actual knowledge or willfully disregards that the consumer is at least 13 years of age but younger than 16 years of age; or

(e) discriminate against a consumer for exercising any of the consumer rights contained in this part, including denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods or services to the consumer.

(3) Nothing in subsection (1) or (2) may be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised their right to opt out pursuant to this part or the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

(4) If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose the processing in its privacy notice and provide access to a clear and conspicuous method outside the privacy notice for a consumer to opt out of the sale or processing. This method may include but is not limited to an internet hyperlink clearly labeled "your opt-out rights" or "your privacy rights" that directly effectuates the opt-out request or takes consumers to a web page where the consumer can make the opt-out request.

(5) A controller shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

(a) the categories of personal data processed by the controller;

(b) the purpose for processing personal data;

(c) the categories of personal data that the controller sells to or shares with third parties, if any;

(d) the categories of third parties, if any, with which the controller sells or shares personal data; and

(e) an active e-mail address or other mechanism that the consumer may use to contact the controller;

(f) an explanation of the rights provided by 30-14-2808(1) and how consumers may exercise their consumer rights, including how a consumer may appeal a controller's decision regarding the consumer's request; and

(g) the date the privacy notice was last updated.

(6) The privacy notice must be made available to the public in each language in which the controller provides a product or service that is subject to the privacy notice or carries out activities related to the product or service.

(7) The controller shall provide the privacy notice in a manner that is reasonably accessible to and usable by individuals with disabilities.

(8) Whenever a controller makes a material change to the controller's privacy notice or practices, the controller shall notify consumers affected by the material change with respect to any prospectively collected personal data and provide a reasonable opportunity for consumers to withdraw consent to any further materially different collection, processing, or transfer of previously collected personal data under the changed policy. The controller shall take all reasonable electronic measures to provide notification regarding material changes to affected consumers, taking into account available technology and the nature of the relationship.

(9) A controller is not required to provide a separate Montana-specific privacy notice or section of a privacy notice if the controller's general privacy notice contains all of the information required by this section.

(10) The privacy notice must be posted online through a conspicuous hyperlink using the word "privacy" on the controller's website homepage or on a mobile device's application store page or download page. A controller that maintains an application on a mobile device or other device shall also include a hyperlink to the privacy notice in the application's settings menu or in a similarly conspicuous and accessible location. A controller that does not operate a website shall make the privacy notice conspicuously available to consumers through a medium regularly used by the controller to interact with consumers, including but not limited to mail.

(11) (a) A controller shall establish and describe in a privacy notice one or more secure and reliable means for consumers to submit a request to exercise their consumer rights pursuant to this part considering the ways in which consumers normally interact with the controller, the need for secure and reliable communication of consumer requests, and the ability of the controller to verify the identity of the consumer making the request.

(b) A controller may not require a consumer to create a new account to exercise consumer rights but may require a consumer to use an existing account.

**History: En. Sec. 7, Ch. 681, L. 2023; amd. Sec. 6, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 6, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2813. Data processor — allowances — limitations.** (1) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting the controller's obligations under this part to include:

(a) considering the nature of processing and the information available to the processor by appropriate technical and organizational measures as much as reasonably practicable to fulfill the controller's obligation to respond to consumer rights requests;

(b) considering the nature of processing and the information available to the processor by assisting the controller in meeting the controller's obligations in relation to the security of processing the personal data and in relation to the notification of a breach of security, as provided for in 30-14-1704, of the system of the processor to meet the controller's obligations; and

(c) providing necessary information to enable the controller to conduct and document data protection assessments.

(2) A contract between a controller and a processor must govern the processor's data processing procedures with respect to processing performed on behalf of the controller. The contract must be binding and clearly set forth instructions for processing data, the nature and purpose of processing, the type of data subject to processing, the duration of processing, and the rights and obligations of both parties. The contract must also require that the processor:

(a) ensure that each person processing personal data is subject to a duty of confidentiality with respect to the personal data;

(b) at the controller's direction, delete or return all personal data to the controller as requested at the end of the provision of services, unless retention of the personal data is required by law;

(c) on the reasonable request of the controller, make available to the controller all information in the processor's possession necessary to demonstrate the processor's compliance with the obligations in this part;

(d) engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the obligations of the processor with respect to the personal data; and

(e) allow and cooperate with reasonable assessments by the controller or the controller's designated assessor, or the processor may arrange for a qualified and independent assessor to assess the processor's policies and technical and organizational measures in support of the obligations under this part using an appropriate and accepted control standard or framework and assessment procedure for the assessments. The processor shall provide a report of the assessment to the controller on request.

(3) Nothing in this section may be construed to relieve a controller or processor from the liabilities imposed on the controller or processor by virtue of the controller's or processor's role in the processing relationship, as described in this part.

(4) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends on the following context in which personal data is to be processed:

(a) A person who is not limited in the processing of personal data pursuant to a controller's instructions or who fails to adhere to a controller's instructions is a controller and not a processor with respect to a specific processing of data.

(b) A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor.

(c) If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, the processor is a controller with respect to the processing and may be subject to an enforcement action under 30-14-2817.

**History:** **En. Sec. 8, Ch. 681, L. 2023.**

**30-14-2814. Data protection assessment.** (1) A controller shall conduct and document a data protection assessment for each of the controller's processing activities that presents a heightened risk of harm to a consumer. For the purposes of this section, processing that presents a heightened risk of harm to a consumer includes:

(a) the processing of personal data for the purposes of targeted advertising;

(b) the sale of personal data;

(c) the processing of personal data for the purposes of profiling in which the profiling presents a reasonably foreseeable risk of:

(i) unfair or deceptive treatment of or unlawful disparate impact on consumers;

(ii) financial, physical, or reputational injury to consumers;

(iii) a physical or other form of intrusion on the solitude or seclusion or the private affairs or concerns of consumers in which the intrusion would be offensive to a reasonable person; or

(iv) other substantial injury to consumers; and

(d) the processing of sensitive data.

(2) (a) Data protection assessments conducted pursuant to subsection (1) must identify and weigh the benefits that may flow, directly and indirectly, from the processing to the controller, the consumer, other stakeholders, and the public against the potential risks to the rights of the consumer associated with the processing as mitigated by safeguards that may be employed by the controller to reduce these risks.

(b) The controller shall factor into any data protection assessment the use of de-identified data and the reasonable expectations of consumers, as well as the context of the processing and the relationship between the controller and the consumer whose personal data will be processed.

(3) (a) The attorney general may require that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general, and the controller shall make the data protection assessment available to the attorney general.

(b) The attorney general may evaluate the data protection assessment for compliance with the responsibilities set forth in this part.

(c) Data protection assessments are confidential and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

(d) To the extent any information contained in a data protection assessment disclosed to the attorney general includes information subject to attorney-client privilege or work product protection, the disclosure may not constitute a waiver of the privilege or protection.

(4) A single data protection assessment may address a comparable set of processing operations that include similar activities.

(5) If a controller conducts a data protection assessment for the purpose of complying with another applicable law or regulation, the data protection assessment must be considered to satisfy the requirements established in this section if the data protection assessment is reasonably similar in scope and effect to the data protection assessment that would otherwise be conducted pursuant to this section.

(6) Data protection assessment requirements must apply to processing activities created or generated after January 1, 2025, and are not retroactive.

**History:** **En. Sec. 9, Ch. 681, L. 2023.**

**30-14-2815. De-identified data.** (1) Any controller in possession of de-identified data shall:

(a) take reasonable measures to ensure that the de-identified data cannot be associated with an individual;

(b) publicly commit to maintaining and using de-identified data without attempting to re-identify the de-identified data; and

(c) contractually obligate any recipients of the de-identified data to comply with all provisions of this part.

(2) Nothing in this part may be construed to:

(a) require a controller or processor to re-identify de-identified data or pseudonymous data; or

(b) maintain data in identifiable form or collect, obtain, retain, or access any data or technology to be capable of associating an authenticated consumer request with personal data.

(3) Nothing in this part may be construed to require a controller or processor to comply with an authenticated consumer rights request if the controller:

(a) is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data;

(b) does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer; and

(c) does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted in this section.

(4) The rights afforded under 30-14-2808(1)(a) through (1)(d) may not apply to pseudonymous data in cases in which the controller is able to demonstrate that any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

(5) A controller that discloses pseudonymous data or de-identified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or de-identified data is subject and shall take appropriate steps to address any breaches of those contractual commitments.

**History:** **En. Sec. 10, Ch. 681, L. 2023.**

**30-14-2816. Compliance by controller or processor.** (1) Nothing in this part may be construed to restrict a controller's or processor's ability to:

(a) comply with federal, state, or municipal ordinances or regulations;

(b) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, municipal, or other government authorities;

(c) cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or municipal ordinances or regulations;

(d) investigate, establish, exercise, prepare for, or defend legal claims;

(e) provide a product or service specifically requested by a consumer;

(f) perform under a contract to which a consumer is a party, including fulfilling the terms of a written warranty;

(g) take steps at the request of a consumer prior to entering a contract;

(h) take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or another individual and when the processing cannot be manifestly based on another legal basis;

(i) prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity, preserve the integrity or security of systems, or investigate, report, or prosecute those responsible for any of these actions;

(j) engage in public or peer-reviewed scientific or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board that determines or similar independent oversight entities that determine:

(i) whether the deletion of the information is likely to provide substantial benefits that do not exclusively accrue to the controller;

(ii) the expected benefits of the research outweigh the privacy risks; and

(iii) whether the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with re-identification;

(k) assist another controller, processor, or third party with any of the obligations under this part; or

(l) process personal data for reasons of public interest in public health, community health, or population health, but solely to the extent that the processing is:

(i) subject to suitable and specific measures to safeguard the rights of the consumer whose personal data is being processed; and

(ii) under the responsibility of a professional subject to confidentiality obligations under federal, state, or local law.

(2) The obligations imposed on controllers or processors under this part may not restrict a controller's or processor's ability to collect, use, or retain personal data for internal use to:

(a) conduct internal research to develop, improve, or repair products, services, or technology;

(b) effectuate a product recall;

(c) identify and repair technical errors that impair existing or intended functionality; or

(d) perform internal operations that are reasonably aligned with the expectations of the consumer or reasonably anticipated based on the consumer's existing relationship with the controller or are otherwise compatible with processing data in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party.

(3) The obligations imposed on controllers or processors under this part may not apply when compliance by the controller or processor with this part would violate an evidentiary privilege under the laws of this state. Nothing in this part may be construed to prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under the laws of this state as part of a privileged communication.

(4) A controller or processor that discloses personal data to a processor or third-party controller in accordance with this part may not be considered to have violated this part if the processor or third-party controller that receives and processes the personal data violates this part provided, at the time the disclosing controller or processor disclosed the personal data, the disclosing controller or processor did not have actual knowledge that the receiving processor or third-party controller would violate this part. A receiving processor or third-party controller receiving personal data from a disclosing controller or processor in compliance with this part is likewise not in violation of this part for the transgressions of the disclosing controller or processor from which the receiving processor or third-party controller receives the personal data.

(5) Nothing in this part may be construed to:

(a) impose any obligation on a controller or processor that adversely affects the rights or freedoms of any person, including but not limited to the rights of any person:

(i) to freedom of speech or freedom of the press guaranteed in the first amendment to the United States constitution; or

(ii) under Rule 504 of the Montana Rules of Evidence;

(b) apply to a person's processing of personal data during the person's personal or household activities; or

(c) require a controller or processor to implement an age verification or age-gating system or otherwise affirmatively collect the age of consumers, but a controller that chooses to conduct commercially reasonable age estimation to determine which consumers are minors is not liable for an erroneous age estimation.

(6) Personal data processed by a controller pursuant to this section may be processed to the extent that the processing is:

(a) reasonably necessary and proportionate to the purposes listed in this section; and

(b) adequate, relevant, and limited to what is necessary in relation to the specific purposes listed in this section. The controller or processor must, when applicable, consider the nature and purpose of the collection, use, or retention of the personal data collected, used, or retained pursuant to subsection (2). The personal data must be subject to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data and to reduce reasonably foreseeable risks of harm to consumers relating to the collection, use, or retention of personal data.

(7) If a controller processes personal data pursuant to an exemption in this section, the controller bears the burden of demonstrating that the processing qualifies for the exemption and complies with the requirements in subsection (6).

(8) Processing personal data for the purposes expressly identified in this section may not solely make a legal entity a controller with respect to the processing.

**History: En. Sec. 11, Ch. 681, L. 2023; amd. Sec. 7, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 7, Ch. 567, L. 2025. Amendment effective October 1, 2025.

**30-14-2817. Enforcement.** (1) The attorney general has exclusive authority and may use the duties and powers provided by Title 30, chapter 14, parts 1 and 2, to enforce violations pursuant to this part.

(2) The attorney general shall post on the attorney general's website:

(a) information relating to:

(i) the responsibilities of a controller pursuant to this part;

(ii) the responsibilities of a processor pursuant to this part; and

(iii) a consumer's rights pursuant to this part; and

(b) an online mechanism through which a consumer may submit a complaint regarding consumer data privacy to the attorney general.

(3) (a) If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in a violation of this part, the attorney general may issue a civil investigative demand pursuant to 30-14-113.

(b) As part of a civil investigative demand, the attorney general may request that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general. The attorney general may evaluate the data protection assessment for compliance with the requirements pursuant to this part.

(4) Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

(5) Nothing in this part may be construed as providing the basis for or be subject to a private right of action for violations of this part or any other law.

**History: En. Sec. 12, Ch. 681, L. 2023; amd. Sec. 8, Ch. 567, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 8, Ch. 567, L. 2025. Amendment effective October 1, 2025.

*Termination Provision Repealed:* Section 15, Ch. 567, L. 2025, repealed sec. 15, Ch. 681, L. 2023, which terminated subsection (2) of this section April 1, 2026. Effective October 1, 2025.

**30-14-2818. Responsibility according to role — processing data of minors.** (1) A processor shall adhere to the instructions of a controller and shall assist the controller to meet the controller's obligations under 30-14-2811 and 30-14-2819, taking into account the nature of the processing and the information available to the processor. The processor shall assist the controller by:

(a) taking appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligations under 30-14-2811; and

(b) providing information to enable the controller to conduct and document data protection assessments pursuant to 30-14-2819.

(2) A contract between a controller and a processor must satisfy the requirements of 30-14-2813(2).

(3) Nothing in this section may be construed to relieve a controller or processor from the liabilities imposed on the controller or processor by virtue of the controller's or processor's role in the processing relationship as described in 30-14-2811 and 30-14-2819.

(4) Determining whether a person is acting as a controller or processor with respect to a specific processing of personal data is a fact-based determination that depends on the context in which personal data is to be processed. A person that is not limited in the person's processing of personal data pursuant to a controller's instructions or that fails to adhere to the instructions is a controller and not a processor with respect to a specific processing of personal data. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains a processor. If a processor begins, alone or jointly with others, determining the purposes and means of the processing of personal data, the processor is a controller with respect to the processing and may be subject to an enforcement action under 30-14-2817.

**History:** **En. Sec. 10, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-14-2819. Data protection assessments for heightened risk of harm to minors.** (1) A controller that, on or after October 1, 2025, offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor shall conduct a data protection assessment for the online service, product, or feature if there is a heightened risk of harm to minors. The controller shall conduct the data protection assessment:

(a) in a manner that is consistent with the requirements established in 30-14-2814; and

(b) to address:

(i) the purpose of the online service, product, or feature;

(ii) the categories of a minor's personal data that the online service, product, or feature processes;

(iii) the purposes for which the controller processes a minor's personal data with respect to the online service, product, or feature; and

(iv) a heightened risk of harm to minors that is a reasonably foreseeable result of offering the online service, product, or feature to minors.

(2) A controller that conducts a data protection assessment pursuant to subsection (1) shall:

(a) review the data protection assessment as necessary to account for a material change to the processing operations of the online service, product, or feature that is the subject of the data protection assessment; and

(b) maintain documentation concerning the data protection assessment for the longer of:

(i) 3 years after the date on which the processing operations cease; or

(ii) the date the controller ceases offering the online service, product, or feature.

(3) A single data protection assessment may address a comparable set of processing operations that include similar activities.

(4) If a controller conducts a data protection assessment for the purpose of complying with another applicable law or regulation, the data protection assessment is considered to satisfy the requirements established in this section if the data protection assessment is reasonably similar in scope and effect to the data protection assessment that would otherwise be conducted pursuant to this section.

(5) If a controller conducts a data protection assessment pursuant to subsection (1) or a data protection assessment review pursuant to subsection (2)(a) and determines that the online service, product, or feature that is the subject of the assessment poses a heightened risk of harm to minors, the controller shall establish and implement a plan to mitigate or eliminate the heightened risk.

(6) (a) A data protection assessment conducted pursuant to this section:

(i) is confidential, except as provided in subsection (6)(b); and

(ii) is not a public record and is exempt from public inspection and copying under the Freedom of Information Act, 5 U.S.C. 552.

(b) (i) A controller shall make a data protection assessment conducted pursuant to this section available to the attorney general on request. The attorney general may evaluate the data protection assessment for compliance with this section and with other laws.

(ii) The disclosure of a data protection assessment pursuant to a request from the attorney general does not constitute a waiver of any attorney-client privilege or work-product protection that might otherwise exist with respect to the assessment and any information in the assessment.

(7) Data protection assessment requirements apply to processing activities created or generated after October 1, 2025, and are not retroactive.

**History:** **En. Sec. 11, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

**30-14-2820. Civil penalty injunction.** (1) A violation of this part is a violation of Title 30, chapter 14, parts 1 and 2.

(2) A person who violates the provisions of this part following the 30-day period described in 30-14-2817(3) is liable for a civil penalty in an amount not to exceed $7,500 for each violation.

(3) The attorney general may bring an action in the name of this state to:

(a) recover a civil penalty under this section;

(b) restrain or enjoin the person from violating this part; or

(c) recover the civil penalty and seek injunctive relief.

(4) The attorney general may recover reasonable attorney fees and other reasonable expenses incurred in investigating and bringing an action under this section.

(5) The attorney general shall deposit a civil penalty collected under this section in a special revenue account to the credit of the department pursuant to 30-14-143.

**History:** **En. Sec. 12, Ch. 567, L. 2025.**

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2025.

## Part 29

## Kill Switches on Personally Owned Property

**Part Compiler's Comments**

*Effective Date:* Section 5, Ch. 573, L. 2025, provided that this part is effective October 1, 2025.

**30-14-2901. Kill switches on personally owned property — warrant required — exceptions — definitions.** (1) An entity may not activate a kill switch on personally owned property without a court order or a warrant issued pursuant to Title 46, chapter 5, part 2.

(2) This section does not apply to:

(a) subscriptions, memberships, other recurring-payment programs, electronic devices used to enforce retail installment sale agreements, lease agreements, rental agreements, and other secured creditor agreements, or to motor vehicles subject to collections. In the event an individual neglects to make regular payments, the entity may activate a kill switch to turn off the individual's subscribed services. An entity shall disclose the existence of the kill switch and the capability of activating it prior to entering into an agreement or contract.

(b) a mechanism or feature that:

(i) addresses an imminent critical safety issue impacting a mechanical or software component of a motor vehicle;

(ii) activates when a driver of a motor vehicle is incapacitated, suffers a medical emergency, or experiences a loss of consciousness;

(iii) takes corrective action in a motor vehicle with an engaged partial driving automation feature if the driver is not attentive or engaged in the driving task and does not respond to warnings;

(iv) brings a motor vehicle with an engaged automated driving system to a minimal risk condition; or

(v) automatically shuts off the engine or motor of an idling motor vehicle that has been left on for an extended period of time while in the park position.

(3) As used in this part, the following definitions apply:

(a) "Entity" means a company that manufactures or distributes personally owned property or that provides service for its functionality.

(b) "Hard reset" means the restoration of personally owned property to the state it was in when it left the factory. Other terms commonly used are "factory reset" and "master reset".

(c) "Individual" means a natural person.

(d) "Kill switch" means a mechanism that may be engaged remotely, regardless of the owner's consent, and is used to:

(i) shut down or perform a hard reset on personally owned property;

(ii) hasten the battery drainage of personally owned property; or

(iii) shorten the software lifespan of personally owned property.

**History:** **En. Sec. 1, Ch. 573, L. 2025.**

**30-14-2902. Enforcement — damages.** (1) A violation of 30-14-2901 is a violation of 30-14-103.

(2) The department of justice may bring an action to restrain any unlawful act pursuant to the provisions of Title 30, chapter 14, part 1.

(3) An individual whose personally owned property has a kill switch activated in violation of 30-14-2901 may bring an action pursuant to 30-14-133, except that:

(a) the individual needs to show only a violation of 30-14-2901 for that individual's personally owned property and is not required to show any other ascertainable loss of money or property; and

(b) the individual is entitled to statutory damages of $10,000 for each violation of 30-14-2901 in addition to any other damages or monetary award pursuant to 30-14-133.

**History:** **En. Sec. 2, Ch. 573, L. 2025.**

**30-14-2903. User consent.** A kill switch may be activated on stolen personally owned property with consent of the property owner.

**History:** **En. Sec. 3, Ch. 573, L. 2025.**

# CHAPTER 15
# FOREIGN-TRADE ZONES

### Part 1 — General Provisions

30-15-101. Authority to establish, operate, and maintain a foreign-trade zone.
30-15-102. Exemption from state licensing requirements and regulations.
30-15-103. Jurisdiction of state.
30-15-104. Taxation of corporations operating foreign-trade zones and their goods.

## Part 1
## General Provisions

**30-15-101. Authority to establish, operate, and maintain a foreign-trade zone.** (1) The state of Montana, a local government unit, or a private or public corporation organized in Montana for the purpose of operating a foreign-trade zone in Montana may apply for the right to and, if the right is granted, establish, operate, and maintain a foreign-trade zone under 19 U.S.C. 81a through 81u.

(2) The governing body of a local government unit may contract with a private or public corporation to operate and maintain a foreign-trade zone that the local government unit has been granted the right to establish, operate, and maintain.

(3) Any activity authorized by the United States to be conducted within a foreign-trade zone may be conducted within a foreign-trade zone operated by a local government unit or Montana corporation under this section.

**History:** **En. Sec. 1, Ch. 674, L. 1979.**

**30-15-102. Exemption from state licensing requirements and regulations.** Goods may be held within a foreign-trade zone exclusive of any license, permit, or regulation of the state or any political subdivision of the state. Such goods may be sold or traded subject to the laws of the United States.

**History:** **En. Sec. 2, Ch. 674, L. 1979.**

**Cross-References**

Licensing — discrimination based on nationality prohibited, 49-3-204.

**30-15-103. Jurisdiction of state.** The state of Montana reserves jurisdiction in a foreign-trade zone in all civil and criminal matters except those related to customs, diversity suits with the requisite amount in controversy, or suits involving a federal question.

**History:** **En. Sec. 3, Ch. 674, L. 1979.**

**30-15-104. Taxation of corporations operating foreign-trade zones and their goods.** Private or public corporations operating foreign-trade zones are subject to all taxes imposed upon them under the provisions of Title 15.

**History:** **En. Sec. 4, Ch. 674, L. 1979; amd. Sec. 3, Ch. 101, L. 1985.**

**Cross-References**

Corporate income tax or alternative corporate income tax, Title 15, ch. 31.

# CHAPTER 16
# SMALL BUSINESS LICENSING COORDINATION

### Part 1 — General Provisions

30-16-101. Short title.
30-16-102. Purpose.
30-16-103. Definitions.
30-16-104. Rulemaking.

### Part 2 — Licensing Coordination Center

30-16-201. Designation of small business licensing coordination center — duties of center.
30-16-202. Information availability.
30-16-203. New licenses, permits, or modifications.
30-16-204. Authority to issue licenses.

### Part 3 — Business Registration and Licensing — Board of Review

30-16-301. Business registration and licensing plan — administration.
30-16-302. Board of review.
30-16-303. Participation of state agencies.

## Part 1
## General Provisions

**30-16-101. Short title.** This chapter may be cited as the "Montana Small Business Licensing Coordination Act".

**History:** **En. Sec. 1, Ch. 453, L. 1981.**

**30-16-102. Purpose.** The purposes of this chapter are to:

(1) eliminate licensing requirements, administrative procedures, and forms that are unnecessary for the protection of the public interest;

(2) streamline and minimize the total government and business costs of necessary licensing and inspection procedures;

(3) distribute equitably the costs of licensing; and

(4) provide a convenient, accessible, and timely system for the business community to acquire and maintain the necessary state registrations and licenses to conduct business.

**History:** **En. Sec. 2, Ch. 453, L. 1981; amd. Sec. 1, Ch. 744, L. 1991.**

**30-16-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative

rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity, including the production of energy using an alternative renewable energy source as defined in 15-6-225.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department.

**History:** **En. Sec. 3, Ch. 453, L. 1981; amd. Sec. 2, Ch. 744, L. 1991; amd. Sec. 1, Ch. 355, L. 1995; amd. Sec. 9, Ch. 366, L. 1997; amd. Sec. 5, Ch. 54, L. 1999; amd. Sec. 19, Ch. 591, L. 2001; amd. Sec. 6, Ch. 405, L. 2003.**

**30-16-104. Rulemaking.** The board of review established in 30-16-302:

(1) shall adopt rules governing the identification and use of electronic forms of signature to fulfill licensing requirements for licensees included in this part;

(2) may adopt rules to establish the anniversary date for the renewal of licenses issued to licensees included in this part; and

(3) shall consult with the pertinent licensing agency before issuing rules concerning license renewal dates.

**History:** **En. Sec. 1, Ch. 366, L. 1997.**

## Part 2
## Licensing Coordination Center

**30-16-201. Designation of small business licensing coordination center — duties of center.** The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements. The assistance required by this subsection includes a specific obligation for the center to immediately inform each business enterprise applying for a license that the business enterprise is required to obtain a business name from the secretary of state pursuant to Title 35 before any other state license application may be processed.

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process; and

(12) perform other administrative tasks delegated to the center to improve state business license administration.

**History:** En. Sec. 4, Ch. 453, L. 1981; amd. Sec. 3, Ch. 744, L. 1991; amd. Sec. 66, Ch. 51, L. 1999; amd. Sec. 1, Ch. 427, L. 2005.

**Cross-References**

State employees — not to assist person in obtaining license for a fee, 2-2-121.
"Agency action" — includes issuing license, 2-3-102.
License defined, 2-4-102.
Licenses — administrative procedure, 2-4-631.
Purpose of agency evaluation, 2-8-101.
Licensing — within quasi-judicial function, 2-15-102.
City Courts — jurisdiction for collection of license fee of city, 3-11-103.
Ferries — establishment and license tax, Title 7, ch. 14, part 28.
License for street railroad, 7-14-4303.
General county licensing authority, Title 7, ch. 21, part 21.
Regulation and licensing of transient retail merchants, Title 7, ch. 21, part 24.
Municipal licensing authority, Title 7, ch. 21, part 41.
Municipal regulation of business and commodities, Title 7, ch. 21, part 42.
Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.
Montana Tax Appeal Board — appeals regarding business licenses, 15-2-201.
Freight line company license tax, Title 15, ch. 55, part 1.
License tax on producers and importers of gypsum and cement, 15-59-102.
License and security of gasoline and special fuel distributors, 15-70-402.
Beer and wine licenses, Title 16, ch. 4, part 1.
All-beverages licenses, Title 16, ch. 4, part 2.
Special alcoholic beverage licenses, Title 16, ch. 4, part 3.
Cigarette licenses, 16-11-120.
Licensing textbook dealers, 20-7-604.
Race meet licensing, 23-4-201.
Card games — licensing by local governing bodies, 23-5-321.
Auctions — licensing powers of cities and towns, 30-11-516.
Licensing of weighing devices, 30-12-203.
Foreign-trade zone — exemption from state licensing requirements, 30-15-102.
Licensing nondiscrimination, 49-3-204.
Emergency medical service licensing, 50-6-306.
Fire protection equipment — licensing, 50-39-101.
Food establishments — licensing, Title 50, ch. 50, part 2; Title 50, ch. 57, part 2.
Hotel and motel licensing, Title 50, ch. 51, part 2.
Tourist campground and trailer court licensing, Title 50, ch. 52, part 2.
Foster home licensing, 52-2-621.
Day-care center licensing, 52-2-721.
Aeronautics licensing, Title 67, ch. 3.
Slaughterhouse license, 81-9-201.
Licensing of rendering or disposal plants, 81-9-301.
Hide dealer's or buyer's license fee, 81-9-411.
Egg dealer's and egg grader's license, 81-20-201.
Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.
License required to operate manufactured dairy products plant, 81-22-201.
License required for milk or cream route, 81-22-204.
Milk — licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.
Petroleum dealer licenses, 82-15-105.
Wharves and docks licenses, 85-16-101.

**30-16-202. Information availability.** The small business licensing coordination center shall encourage and invite federal and local government agencies to make license and permit information available to applicants through the coordination center. The center shall, where possible, advise applicants of federal and local government agency license and permit requirements.

**History:** En. Sec. 7, Ch. 453, L. 1981.

**Cross-References**

Ferries — establishment and license tax, Title 7, ch. 14, part 28.
License for street railroad, 7-14-4303.
General county licensing authority, Title 7, ch. 21, part 21.
Regulation and licensing of transient retail merchants, Title 7, ch. 21, part 24.
Municipal licensing authority, Title 7, ch. 21, part 41.
Municipal regulation of business and commodities, Title 7, ch. 21, part 42.
Licensing and regulating vehicles engaged in transporting persons and property, 7-21-4205.

**30-16-203. New licenses, permits, or modifications.** Each state agency shall report to the coordination center any new license or permit or modification of an existing license or permit that becomes effective as a requirement after April 20, 1981, together with the applicable forms and pertinent rules and information.

**History:** **En. Sec. 8, Ch. 453, L. 1981.**

**30-16-204. Authority to issue licenses.** Regardless of any authority delegated to the department to implement the provisions of this chapter, the authority to issue a license remains with the agency authorized by law to issue the license.

**History:** **En. Sec. 4, Ch. 744, L. 1991.**

## Part 3
## Business Registration and Licensing — Board of Review

**30-16-301. Business registration and licensing plan — administration.** (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) payment of fees required for licensure by credit card, debit card, or other commercially acceptable means as provided in 15-1-231.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review.

**History:** **En. Sec. 2, Ch. 355, L. 1995; amd. Sec. 10, Ch. 366, L. 1997; amd. Sec. 6, Ch. 54, L. 1999; amd. Sec. 26, Ch. 474, L. 2003; amd. Sec. 2, Ch. 47, L. 2005; amd. Sec. 7, Ch. 26, L. 2011.**

**30-16-302. Board of review.** (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, labor and industry, environmental quality, livestock, revenue, justice, and public health and human services, a member appointed by the president of the senate, and a member appointed by the speaker of the house. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review by the governor.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

(5) The board of review is attached to the department of revenue for administrative purposes only as provided in 2-15-121.

**History:** **En. Sec. 3, Ch. 355, L. 1995; amd. Sec. 11, Ch. 366, L. 1997; amd. Sec. 1, Ch. 7, L. 1999; amd. Secs. 1, 2, Ch. 323, L. 2001; amd. Sec. 69, Ch. 483, L. 2001; amd. Sec. 2, Ch. 427, L. 2005.**

**30-16-303. Participation of state agencies.** (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, environmental quality, revenue, justice, labor and industry, and public health and human services;

(b) the public service commission; and

(c) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) (a) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies in an amount equal to no more than one-half of the total cost of processing and issuing a license.

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan.

**History: En. Sec. 4, Ch. 355, L. 1995; amd. Sec. 2, Ch. 7, L. 1999; amd. Sec. 1, Ch. 116, L. 2001; amd. Sec. 3, Ch. 190, L. 2003; amd. Sec. 3, Ch. 427, L. 2005.**

# CHAPTER 17

# ELECTRONIC DIRECTORY OF MONTANA PRODUCTS

### Part 1 — General Provisions

30-17-101. Electronic directory of Montana products.
30-17-102. Rules — contract — conduct of public officers and employees.

## Part 1

## General Provisions

**30-17-101. Electronic directory of Montana products.** (1) (a) The department of commerce shall provide an electronic directory on the internet of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet. Agreement by a company also means that the company grants permission for inclusion on a distribution list pursuant to 2-6-1017.

(b) The department of commerce is not responsible for listing a company if that company has not contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.

(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, "value-added" means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product.

**History: En. Sec. 1, Ch. 173, L. 2005; amd. Sec. 50, Ch. 348, L. 2015; amd. Sec. 2, Ch. 147, L. 2019.**

**30-17-102. Rules — contract — conduct of public officers and employees.** (1) The department of commerce may adopt rules necessary for the creation, maintenance, and updating of the electronic directory provided for in 30-17-101. The rules may include requirements for the design of a website, information that may be contained in the electronic directory, the format of the electronic directory, information that may be provided to potential customers, and requirements for updating material contained in the electronic directory.

(2) The department of commerce may contract with the department of administration or a private vendor for the creation, maintenance, and updating of the electronic directory and website provided for in 30-17-101.

(3) Public officers or employees who outside of their work for a public agency are involved in the creation of products that qualify for inclusion in the electronic directory provided for in 30-17-101 may list their products in the electronic directory without being in violation of the provisions of 2-2-121.

**History: En. Sec. 2, Ch. 173, L. 2005.**

# CHAPTER 18
# ELECTRONIC TRANSACTIONS

## Part 1 — Uniform Electronic Transactions Act

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30-18-117. Acceptance and distribution of electronic records by governmental agencies.
30-18-118. Interoperability.

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## Part 1
## Uniform Electronic Transactions Act

**30-18-101. Short title.** This part may be cited as the "Uniform Electronic Transactions Act".

**History: En. Sec. 1, Ch. 52, L. 2001.**

**30-18-102. Definitions.** In this part:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by this part and other applicable law;

(5) "cryptosystem" means a system that transforms or encrypts information for the purpose of secrecy or authenticity. The term includes a computer-based security procedure capable of generating and using a key pair.

(6) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(7) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;

(8) "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means;

(9) "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(10) "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;

(11) "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like;

(12) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;

(13) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;

(14) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(15) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(16) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(17) "state agency" means a department, board, commission, authority, or other governmental entity of the executive branch of state government, including the Montana university system, that sends or receives electronic records;

(18) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

**History: En. Sec. 2, Ch. 52, L. 2001; amd. Sec. 1, Ch. 130, L. 2007.**

**30-18-103. Scope.** (1) Except as otherwise provided in subsection (2), this part applies to electronic records and electronic signatures relating to a transaction.

(2) This part does not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts;

(b) Title 30, chapter 1, other than 30-1-107, and chapters 3 through 9A; and

(c) Title 13.

(3) This part applies to an electronic record or electronic signature otherwise excluded from the application of this part under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to this part is also subject to other applicable substantive law.

**History: En. Sec. 3, Ch. 52, L. 2001; amd. Sec. 86, Ch. 575, L. 2005; amd. Sec. 55, Ch. 647, L. 2023.**

**30-18-104. Use of electronic records and electronic signatures — variation by agreement.** (1) This part does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) This part applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in this part, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this part of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this part and other applicable law.

**History: En. Sec. 4, Ch. 52, L. 2001.**

**30-18-105. Construction and application.** This part must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

**History: En. Sec. 5, Ch. 52, L. 2001.**

**30-18-106. Legal recognition of electronic records, electronic signatures, and electronic contracts.** (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

**History: En. Sec. 6, Ch. 52, L. 2001.**

**30-18-107. Provision of information in writing — presentation of records.** (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than this part requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in subsection (4)(b), the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) to the extent a law other than this part requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) a requirement under a law other than this part to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by agreement to the extent permitted by the other law.

**History: En. Sec. 7, Ch. 52, L. 2001.**

**30-18-108. Attribution and effect of electronic record and electronic signature.** (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

**History: En. Sec. 8, Ch. 52, L. 2001.**

**30-18-109. Effect of change or error.** If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subsections (2) and (3) may not be varied by agreement.

**History: En. Sec. 9, Ch. 52, L. 2001.**

**30-18-110. Notarization and acknowledgment.** If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

**History: En. Sec. 10, Ch. 52, L. 2001.**

**30-18-111. Retention of electronic records — originals.** (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

(a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1).

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1).

(6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2001, specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

**History:** **En. Sec. 11, Ch. 52, L. 2001.**

**30-18-112. Admissibility in evidence.** In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

**History:** **En. Sec. 12, Ch. 52, L. 2001.**

**30-18-113. Automated transaction.** In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

**History:** **En. Sec. 13, Ch. 52, L. 2001.**

**30-18-114. Time and place of sending and receipt.** (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) is in a form capable of being processed by that system; and

(c) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) it is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place the information processing system is located is different from the place the electronic record is considered to be received under subsection (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is considered to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or the recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1), or purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

**History: En. Sec. 14, Ch. 52, L. 2001.**

**30-18-115. Transferable records.** (1) In this section, "transferable record" means an electronic record that:

(a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that:

(a) a single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to which the transferable record was issued; or

(ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in 30-1-201(2)(v), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 30, chapters 1 through 9A, including, if the applicable statutory requirements under 30-3-302(1), 30-7-501, or 30-9A-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9A.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

**History: En. Sec. 15, Ch. 52, L. 2001; amd. Sec. 87, Ch. 575, L. 2005.**

**30-18-116. Creation and retention of electronic records and conversion of written records by governmental agencies.** Each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

**History: En. Sec. 16, Ch. 52, L. 2001.**

**30-18-117. Acceptance and distribution of electronic records by governmental agencies.** (1) Except as otherwise provided in 30-18-111(6), each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the secretary of state, giving due consideration to security, may specify:

(a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in 30-18-111(6), this part does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

**History: En. Sec. 17, Ch. 52, L. 2001; amd. Sec. 15, Ch. 123, L. 2013.**

**30-18-118. Interoperability.** (1) The secretary of state may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

(2) Any state agency may adopt rules to implement this part. However, governmental agencies are not limited to the use of a cryptosystem or any other specific technology for electronic transactions provided for in this part.

**History: En. Sec. 18, Ch. 52, L. 2001; amd. Sec. 2, Ch. 130, L. 2007.**

## CHAPTER 19
## RENTAL AND RENTAL-PURCHASE AGREEMENTS

### Part 1 — Montana Rental-Purchase Agreement Act

30-19-101. Short title.
30-19-102. Purpose.
30-19-103. Definitions.
30-19-104. Exemptions of applicability.
30-19-105 through 30-19-108 reserved.
30-19-109. Disclosure of information.
30-19-110. Information required in disclosure.
30-19-111. Provisions prohibited in agreements.
30-19-112. Reinstatement of agreement — repossession.
30-19-113. Written receipt for cash or money order.
30-19-114. Renegotiation of rental-purchase agreement — extension not considered renegotiation.
30-19-115. Advertisement of rental-purchase agreement.
30-19-116. Enforcement — bona fide errors.

## Part 1
## Montana Rental-Purchase Agreement Act

**30-19-101. Short title.** This part may be cited as the "Montana Rental-Purchase Agreement Act".

**History:** En. Sec. 1, Ch. 263, L. 2001.

**30-19-102. Purpose.** (1) The legislature finds that the rental-purchase industry is unique in its structure of providing a service to Montana consumers, in that the business transaction involved is not a credit transaction, does not create a debt or a security interest, and is not a simple rental or lease. As a result, rental-purchase agreements deserve their own regulatory scheme.

(2) The purpose of this part is to protect consumers and businesses engaged in the rental-purchase of consumer goods against unfair or deceptive acts and practices and to provide certainty and regularity in the conduct of rental-purchase transactions.

**History:** En. Sec. 2, Ch. 263, L. 2001.

**30-19-103. Definitions.** As used in this part, the following definitions apply:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental-purchase agreement but does not include price tags, window signs, or other in-store merchandising aids.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.

(3) "Consumer" means a person who rents personal property under a rental-purchase agreement to be used primarily for personal, family, or household purposes.

(4) "Consummation" means the time that a consumer becomes contractually obligated by signing a rental-purchase agreement.

(5) "Lessor" means a person who regularly provides the use of property through rental-purchase agreements and to whom rent payments are initially payable on the face of the rental-purchase agreement.

(6) "Rental-purchase agreement" or "agreement" means an agreement between a lessor and a consumer that has the following characteristics:

(a) the agreement governs the use of personal property by a person primarily for personal, family, or household purposes;

(b) the agreement is entered into for an initial period of 4 months or less and is automatically renewable with each payment after the initial period;

(c) the agreement does not obligate or require the consumer to continue renting or using the property beyond the initial period; and

(d) the agreement permits the consumer to become the owner of the property.

**History:** En. Sec. 3, Ch. 263, L. 2001.

**30-19-104. Exemptions of applicability.** (1) The provisions of this part are not subject to laws relating to:

(a) retail installment sales contracts as defined in 31-1-202;

(b) security interests regulated by the provisions of Title 30, chapters 1 through 9A;

(c) leases regulated by the provisions of Title 30, chapter 2A;

(d) personal solicitation sales defined in 30-14-502; and

(e) interest rates or loans on money as provided for in Title 31, chapter 1.

(2) The provisions of this part do not apply to:

(a) a lease-purchase agreement primarily for business, commercial, or agricultural purposes or agreements made with governmental agencies, political subdivisions, or organizations;

(b) a lease or bailment of personal property that is incidental to the lease of real property and that provides the consumer with no option to purchase the leased property; or

(c) the lease of a motor vehicle.

**History:** En. Sec. 4, Ch. 263, L. 2001.

**30-19-105 through 30-19-108 reserved.**

**30-19-109. Disclosure of information.** (1) A lessor shall disclose to the consumer the information provided for in 30-19-110.

(2) The disclosure must be made at or before consummation of the rental-purchase agreement.

(3) The disclosure must be made clearly and conspicuously in writing, and a copy of the rental-purchase agreement must be provided to the consumer.

(4) The disclosure information required under 30-19-110 must be provided for on the face of the contract above the line provided for the consumer's signature.

(5) If a disclosure becomes inaccurate as a result of any act, occurrence, or agreement by the consumer after the delivery of the required disclosure, the resulting inaccuracy is not in violation of this part.

**History: En. Sec. 5, Ch. 263, L. 2001.**

**30-19-110. Information required in disclosure.** For each rental-purchase agreement, the lessor shall disclose the following items in the agreement:

(1) the total number, the amount, and the timing of all rental payments necessary to acquire ownership of the property;

(2) a statement that the consumer will not have an ownership interest in the property until the consumer has made the total number of rental payments necessary to acquire ownership;

(3) a statement that the consumer is responsible for the fair market value of the property if the property is lost, stolen, damaged, or destroyed;

(4) a brief description of the rented property sufficient to identify the property to the consumer and the lessor. The description of the rented property may include an identification number and must include a statement indicating whether the property is new or used. A lessor is not liable for a statement that inadvertently describes property as being used if the property is new.

(5) a brief description of any existing damage to the rental property;

(6) a statement of the cash price of the property. If the agreement involves the rental of more than one item as a set, in one agreement, a statement of the combined cash price of the items in the set may be stated.

(7) the total of the initial payments paid or required at or before consummation of the rental-purchase agreement or delivery of the property, whichever is later;

(8) (a) a statement that the total amount of the rental payment does not include taxes or other charges and fees, including but not limited to:

(i) late payment;
(ii) processing;
(iii) default;
(iv) pickup;
(v) liability damage waiver;
(vi) insurance; or
(vii) other charges or fees that are necessary and appropriate; and

(b) the charges and fees identified in subsection (8)(a), itemized separately;

(9) a statement informing the consumer that the consumer has the right to exercise an early purchase option;

(10) (a) a statement identifying the party responsible and a description of the responsibility for maintaining or servicing the property while it is being rented; and

(b) if the property is covered by a manufacturer's warranty, a notice that the warranty is transferred to the consumer if the consumer acquires ownership of the property and if the manufacturer's warranty allows for the transfer;

(11) the date of the transaction and the identities of the consumer and the lessor;

(12) a statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, except for ordinary wear and tear, on the expiration of any rental term agreement along with any past-due rent payments, if any; and

(13) notice of the right to reinstate an agreement as provided in 30-19-112.

**History: En. Sec. 6, Ch. 263, L. 2001.**

**30-19-111. Provisions prohibited in agreements.** A rental-purchase agreement may not contain:

(1) a confession of judgment;

(2) a negotiable instrument;

(3) a security interest or any other claim of property interest in any property except the property delivered by the lessor pursuant to the rental-purchase agreement;

(4) a wage assignment;

(5) a waiver of claims or defenses by the consumer; and

(6) a provision authorizing the lessor or any person acting on the lessor's behalf to enter the consumer's premises or to commit any breach of the peace in the repossession of property.

**History: En. Sec. 7, Ch. 263, L. 2001.**

**30-19-112. Reinstatement of agreement — repossession.** (1) A consumer who fails to make a timely rent payment may reinstate the agreement, without losing any rights or options that existed in the original agreement, by paying:

(a) all past-due rent payments;

(b) the next rent payment;

(c) reasonable pickup and redelivery costs if the property was picked up by the lessor; and

(d) any applicable late fees.

(2) A consumer exercising the reinstatement option provided for in subsection (1) must provide the applicable payments to the lessor within:

(a) 5 days of the renewal date if the agreement specified a monthly payment schedule; or

(b) 2 days of the renewal date if the agreement specified a semimonthly payment schedule.

(3) If a consumer has not made two-thirds of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of the property.

(4) If a consumer has made two-thirds or more of the total payments necessary to acquire ownership of the property and has returned or voluntarily surrendered the property during the applicable reinstatement period established in this section, the consumer may reinstate the agreement during a period of not less than 45 days after the date of the return of the property.

(5) The provisions of subsections (3) and (4) do not apply to instances when the consumer returned or surrendered the property on an order from a court.

(6) This section does not prevent a lessor from attempting to repossess property during the reinstatement period, but the repossession does not affect the consumer's right to reinstate the agreement. If the agreement is reinstated, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

**History: En. Sec. 8, Ch. 263, L. 2001.**

**30-19-113. Written receipt for cash or money order.** A lessor shall provide the consumer, at the consumer's request, a written receipt for any payment made by cash or money order.

**History: En. Sec. 9, Ch. 263, L. 2001.**

**30-19-114. Renegotiation of rental-purchase agreement — extension not considered renegotiation.** (1) A renegotiation of an agreement must occur when an existing agreement is satisfied and replaced by a new agreement between the lessor and the consumer. A renegotiation is considered a new agreement and requires new disclosures as provided for in 30-19-110. The following events may not be treated as a renegotiation:

(a) the addition or return of property in a multiple-item agreement or in the substitution of the rental property, if in either case the average payment allocable to a payment period is not changed by more than 25%;

(b) a deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) a reduction in charges in the agreement; or

(d) an agreement involved in a court proceeding.

(2) An extension of an agreement is not a renegotiation.

**History: En. Sec. 10, Ch. 263, L. 2001.**

**30-19-115. Advertisement of rental-purchase agreement.** (1) An advertisement for an agreement that refers to or states the monetary amount of any payment and the right to acquire ownership of property must clearly and conspicuously state:

(a) that the transaction advertised is a rental-purchase agreement;

(b) the total payments necessary to acquire ownership of any specific item; and

(c) that the consumer acquires no ownership interest if the total amount necessary to acquire the property is not paid.

(2) An owner or employee of an advertising enterprise preparing or providing advertising to an entity offering rental-purchase agreements is not liable for omissions or errors in advertisements.

**History: En. Sec. 11, Ch. 263, L. 2001.**

**30-19-116. Enforcement — bona fide errors.** (1) Except when inconsistent with the provisions of this part, a violation of this part is a violation of Title 30, chapter 14, part 1.

(2) (a) A lessor may not be held liable for a violation of the provisions of this part if the lessor proves by a preponderance of evidence that the violation was not intentional and resulted from bona fide error despite the lessor's maintenance of procedures reasonably intended to avoid the error.

(b) (i) For the purposes of this section, a bona fide error includes but is not limited to clerical, calculation, computer malfunction, programming, and printing error.

(ii) An error of legal judgment with respect to a person's obligations under this part is not a bona fide error.

**History: En. Sec. 12, Ch. 263, L. 2001.**

# CHAPTER 20
# FIREARMS AND AMMUNITION MADE IN MONTANA

**Part 1 — Montana Firearms Freedom Act**

30-20-101. Short title.
30-20-102. Legislative declarations of authority.
30-20-103. Definitions.
30-20-104. Prohibitions.
30-20-105. Exceptions.
30-20-106. Marketing of firearms.

**Part 2 — Montana Ammunition Availability Act**

30-20-201. Short title.
30-20-202. Legislative findings.
30-20-203. Definitions.
30-20-204. Terminated.
30-20-205. Tort liability.
30-20-206. Economic development.
30-20-207. Tax exemption for manufacturing of ammunition components — conditions — real property exemption applies to safety zone.
30-20-208. Tax exemptions for providing loans to manufacturer of ammunition components — conditions.

**Part 3 — Financial Industry Nondiscrimination**

30-20-301. Financial industry nondiscrimination — definitions.

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**Chapter Cross-References**

Right to bear arms, Art. II, sec. 12, Mont. Const.

## Part 1
## Montana Firearms Freedom Act

**Cross-References**

Montana Federal Firearm, Magazine, and Ammunition Ban Enforcement Prohibition Act, 45-8-365 through 45-8-368.

**30-20-101. Short title.** This part may be cited as the "Montana Firearms Freedom Act".

**History: En. Sec. 1, Ch. 205, L. 2009.**

**30-20-102. Legislative declarations of authority.** The legislature declares that the authority for this part is the following:

(1) The 10th amendment to the United States constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Montana certain powers as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those powers is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(2) The ninth amendment to the United States constitution guarantees to the people rights not granted in the constitution and reserves to the people of Montana certain rights as they were understood at the time that Montana was admitted to statehood in 1889. The guaranty of those rights is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(3) The regulation of intrastate commerce is vested in the states under the 9th and 10th amendments to the United States constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition.

(4) The second amendment to the United States constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Montana was admitted to statehood in 1889, and the guaranty of the right is a matter of contract between the state and people of Montana and the United States as of the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

(5) Article II, section 12, of the Montana constitution clearly secures to Montana citizens, and prohibits government interference with, the right of individual Montana citizens to keep and bear arms. This constitutional protection is unchanged from the 1889 Montana constitution, which was approved by congress and the people of Montana, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Montana and the United States in 1889.

**History:** **En. Sec. 2, Ch. 205, L. 2009.**

**30-20-103. Definitions.** As used in this part, the following definitions apply:

(1) "Borders of Montana" means the boundaries of Montana described in Article I, section 1, of the 1889 Montana constitution.

(2) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination.

(3) "Generic and insignificant parts" includes but is not limited to springs, screws, nuts, and pins.

(4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness, including but not limited to forging, casting, machining, or other processes for working materials.

**History:** **En. Sec. 3, Ch. 205, L. 2009.**

**30-20-104. Prohibitions.** A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Montana from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Montana and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Montana does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Montana from those materials. Firearms accessories that are imported into Montana from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Montana.

**History: En. Sec. 4, Ch. 205, L. 2009.**

**30-20-105. Exceptions.** Section 30-20-104 does not apply to:

(1) a firearm that cannot be carried and used by one person;

(2) a firearm that has a bore diameter greater than 1 ½ inches and that uses smokeless powder, not black powder, as a propellant;

(3) ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(4) a firearm that discharges two or more projectiles with one activation of the trigger or other firing device.

**History: En. Sec. 5, Ch. 205, L. 2009.**

**30-20-106. Marketing of firearms.** A firearm manufactured or sold in Montana under this part must have the words "Made in Montana" clearly stamped on a central metallic part, such as the receiver or frame.

**History: En. Sec. 6, Ch. 205, L. 2009.**

## Part 2
## Montana Ammunition Availability Act

**Part Cross-References**

Montana Federal Firearm, Magazine, and Ammunition Ban Enforcement Prohibition Act, 45-8-365 through 45-8-368.

**30-20-201. Short title.** This part may be cited as the "Montana Ammunition Availability Act".

**History: En. Sec. 1, Ch. 440, L. 2015.**

**30-20-202. Legislative findings.** (1) In recognition that the people of Montana have reserved to themselves the individual right to bear arms in Article II, section 12, of the Montana constitution, the legislature finds that both this right and the firearms that the people possess are at serious risk if the people cannot obtain ammunition for firearms. An adequate source of ammunition is an indivisible and essential part of the right to bear arms. The people of Montana are totally dependent upon a very few manufacturers of smokeless propellant, small arms primers, and cartridge cases located in other states for small arms ammunition used in Montana.

(2) The legislature intends to encourage the manufacture of smokeless propellant, small arms primers, and cartridge cases within the borders of Montana to ensure availability of small arms ammunition for the people of Montana and to fully implement the right to bear arms that the people have reserved to themselves.

**History: En. Sec. 2, Ch. 440, L. 2015.**

**30-20-203. Definitions.** As used in this part, the following definitions apply:

(1) "Ammunition components" means propellants, primers, and cartridge cases.

(2) "Black powder" means a propellant made from potassium or sodium nitrate, charcoal, and sulfur or a substitute for black powder made differently that is used for conventional small arms or antique or replica arms.

(3) "Cartridge cases" means the casings that contain and hold together the propellant, primer, and bullet, which may be formed from brass, aluminum, steel, plastic, or some combination of those or other materials.

(4) "Primary business" means a manufacturer in which more than one-half of its product produced is and more than one-half of its gross income comes from sales of ammunition components.

(5) "Propellant" includes smokeless propellant and black powder.

(6) "Small arms" means pistols, revolvers, rifles, shotguns, and other similar devices that are portable by one person, the possession and use of which are protected by Article II, section 12, of the Montana constitution.

(7) "Small arms primers" means the priming component for a round of ammunition intended for use in small arms that is usually made of a cup, an anvil, and a shock-sensitive chemical compound and is designed to ignite the propellant in an ammunition cartridge for conventional small arms.

(8) "Smokeless propellant" means a chemical substance designed to expel a projectile from small arms through burning and expansion at a quick but controlled burning rate.

**History: En. Sec. 3, Ch. 440, L. 2015.**

**30-20-204. Terminated.** Sec. 16, Ch. 440, L. 2015.

**History: En. Sec. 4, Ch. 440, L. 2015; amd. Sec. 21, Ch. 3, L. 2019.**

**30-20-205. Tort liability.** The provisions of 27-1-720 apply to ammunition components manufactured in Montana.

**History: En. Sec. 5, Ch. 440, L. 2015.**

**30-20-206. Economic development.** The establishment of a primary business is a qualified economic development purpose pursuant to 90-1-117 through 90-1-119 and Title 90, chapter 1, part 2.

**History: En. Sec. 6, Ch. 440, L. 2015.**

**30-20-207.** *(Temporary)* **Tax exemption for manufacturing of ammunition components — conditions — real property exemption applies to safety zone.** (1) A person or entity in this state engaged in the primary business of the manufacture of ammunition components that meets the conditions in subsections (2) through (4) is exempt from:

(a) property taxes levied for state educational purposes under 20-9-331, 20-9-333, 20-9-360, and 20-25-439;

(b) the business equipment tax levied pursuant to 15-6-138;

(c) individual income taxes as provided in Title 15, chapter 30;

(d) corporate income or alternative corporate income taxes as provided in Title 15, chapter 31; and

(e) any other tax on business activity levied by the state, except:

(i) the local portion of property tax not exempt under subsection (1)(a); or

(ii) an employer's share of employee payroll taxes that are used to finance state-mandated programs, including unemployment insurance and workers' compensation.

(2) A person or entity in this state engaged in the primary business of the manufacture of ammunition components is exempt from taxation as provided under subsection (1) if the person's or entity's business meets the following conditions:

(a) the products of the business are and remain available to commercial and individual consumers in the state;

(b) the business sells its products to in-state commercial and individual consumers for a price no greater than that for out-of-state purchasers, including any products that leave the state regardless of destination or purchaser; and

(c) the business does not enter into any agreement or contract that could actually or potentially command or commit all of its production to out-of-state consumers or interfere with or prohibit sales and provision of products to in-state consumers.

(3) The exemptions allowed under subsection (1) apply only to the property, income, and business activity attributable to the manufacture of ammunition components.

(4) The real property exemption allowed under subsection (1)(a) encompasses any property within 500 yards of a structure used for the manufacture of ammunition components or of any structure used for storage of products manufactured onsite. *(Terminates December 31, 2035—sec. 11, Ch. 675, L. 2025.)*

**History: En. Sec. 1, Ch. 675, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 9, Ch. 675, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

*Retroactive Applicability:* Section 10, Ch. 675, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 2025."

*Termination:* Section 11, Ch. 675, L. 2025, provided: "[This act] terminates December 31, 2035."

**30-20-208.** *(Temporary)* **Tax exemptions for providing loans to manufacturer of ammunition components — conditions.** (1) Subject to subsection (2), a lender or investor that provides loans to a person or entity in this state engaged in the primary business of the manufacture of ammunition components under the provisions of 30-20-207 is exempt from:

(a) individual income taxes as provided in Title 15, chapter 30; and

(b) corporate income or alternative corporate income taxes as provided in Title 15, chapter 31.

(2) The exemption provided for in this section:

(a) does not apply to an employer's share of employee payroll taxes that are used to finance state-mandated programs, including unemployment insurance and workers' compensation; and

(b) may be claimed only for income attributable to providing a bona fide loan in an arms' length transaction to a manufacturer of ammunition components that satisfies the conditions of 30-20-207. *(Terminates December 31, 2035—sec. 11, Ch. 675, L. 2025.)*

**History: En. Sec. 2, Ch. 675, L. 2025.**

**Compiler's Comments**

*Effective Date:* Section 9, Ch. 675, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

*Retroactive Applicability:* Section 10, Ch. 675, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 2025."

*Termination:* Section 11, Ch. 675, L. 2025, provided: "[This act] terminates December 31, 2035."

## Part 3
## Financial Industry Nondiscrimination

**30-20-301. Financial industry nondiscrimination — definitions.** (1) The provisions of this section apply only to a contract that:

(a) Is between a governmental entity and a company with at least 10 full-time employees; and

(b) has a value of at least $100,000 that is paid wholly or partly from public funds of the governmental entity.

(2) Except as provided in subsection (3), a governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it:

(a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and

(b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(3) The provisions of subsection (2) do not apply to a governmental entity that:

(a) contracts with a sole-source provider; or

(b) does not receive a bid from a company that is able to provide the written verification required by subsection (2).

(4) The department of administration, the judicial branch, or a state agency, as defined in 2-2-102 and in which the contract originated, has the authority and responsibility of reviewing state governmental contracts to confirm that the requirements of subsection (2) of this section have been satisfied.

(5) As used in this section, the following definitions apply:

(a) "Ammunition" means a loaded cartridge or shot shell, case, primer, projectile, wadding, or propellant powder.

(b) (i) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, a majority-owned subsidiary, a parent company, or an affiliate of those entities or associations that exists to make a profit.

(ii) The term does not include a sole proprietorship.

(c) (i) "Contract" means a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and the right to seek a remedy for the breach of those duties.

(ii) This term does not include an agreement related to investment services.

(d) (i) "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

(A) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(B) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations; or

(C) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(ii) The term does not include the policies of a vendor, merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories.

(iii) The term also does not include a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local laws, policies, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on the status of an entity or association as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(e) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.

(f) "Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.

(g) "Firearm entity" means:

(i) a firearm or a firearm accessory or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or

(ii) a gun range.

(h) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(i) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(ii) has two or more firearm entities as members; and

(iii) is exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as an organization described by section 501(c) of that code.

(i) "Governmental entity" means any branch, department, agency, or instrumentality of state government, any official or other person acting under color of state law, or any political subdivision of this state.

(j) "Sole-source provider" means a supplier who provides goods or services of a unique nature or goods or services that are solely available through the supplier and the supplier is the only practicable source to provide the goods or services.

**History: En. Sec. 1, Ch. 193, L. 2023.**

## CHAPTER 21
## RESERVED

# CHAPTER 22
# NONFERROUS METAL TRANSACTIONS

Part 1 — General Provisions

30-22-101. Definitions.
30-22-102. Recordkeeping.
30-22-103. Penalty.
30-22-104. Sale of catalytic converters.

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## Part 1
## General Provisions

**30-22-101. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Nonferrous metal" means metal and metal alloys not containing significant quantities of iron or steel, including but not limited to:

(a) copper;

(b) brass;

(c) aluminum, other than aluminum cans;

(d) bronze;

(e) lead;

(f) zinc;

(g) nickel;

(h) stainless steel, including stainless steel beer kegs; and

(i) precious metals, including catalytic converters and their component parts and materials.

(2) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity.

(3) "Salvage metal dealer" means a person who is engaged in the business of paying, trading, recycling, or bartering for or collecting nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(4) "Seller" means a person who sells or delivers nonferrous metal or otherwise makes nonferrous metal available to a salvage metal dealer.

**History: En. Sec. 1, Ch. 316, L. 2009; amd. Sec. 1, Ch. 174, L. 2013; amd. Sec. 3, Ch. 372, L. 2023.**

**30-22-102. Recordkeeping.** (1) A salvage metal dealer shall:

(a) maintain a nonferrous metal acquisition record for nonferrous metal transactions that include a catalytic converter or that exceed $50;

(b) retain a nonferrous metal acquisition record for a period of not less than 2 years from the date of the transaction; and

(c) make nonferrous metal acquisition records available to any peace officer on demand.

(2) The nonferrous metal acquisition record required under subsection (1) must contain:

(a) the time and date of the transaction and the name of the person conducting the transaction on behalf of the salvage metal dealer;

(b) a general description, using scrap specifications recognized by the institute of scrap recycling industries, inc., of the property acquired, including the type and amount and, if readily discernible, any identifiable marks on the property;

(c) the amount of consideration given for the nonferrous metal;

(d) a photocopy or scanned copy of a current, valid driver's license, passport, or state identification card of the seller, except that the identification copies required under this subsection (2)(d) do not apply if a check for payment is provided to a seller or transferor;

(e) a signature of the seller or transferor;

(f) a description of any motor vehicle and its license number used in the delivery of the nonferrous metal; and

(g) if the transaction includes a catalytic converter, documentation showing the catalytic converter was removed from a vehicle registered to the seller.

**History: En. Sec. 2, Ch. 316, L. 2009; amd. Sec. 4, Ch. 372, L. 2023.**

**30-22-103. Penalty.** A salvage metal dealer who violates the provisions of 30-22-102 is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of 30-22-102.

**History: En. Sec. 3, Ch. 316, L. 2009.**

**30-22-104. Sale of catalytic converters.** (1) A seller who is not a licensed salvage metal dealer may not sell more than one catalytic converter to a salvage metal dealer a day.

(2) Unless the transaction or exchange is with another salvage metal dealer, a salvage metal dealer may not:

(a) provide any consideration to a seller of a catalytic converter until 72 hours after the most recent transaction between the salvage metal dealer and the seller; and

(b) pay more than $30 in cash, stored value device, or electronic fund transfer for any transaction that includes a catalytic converter. Additional consideration contracted for must be paid by check.

**History: En. Sec. 1, Ch. 372, L. 2023.**

# CHAPTER 23
# GENETIC INFORMATION PRIVACY

### Part 1 — Genetic Information Privacy Act

**30-23-101.** Short title — legislative findings and declaration of purpose.
**30-23-102.** Definitions.
**30-23-103.** Exceptions.
**30-23-104.** Consumer genetic or neurotechnology data — privacy notice — consent — access — deletion — destruction.
**30-23-105.** Disclosure — when prohibited — when express consent required.
**30-23-106.** Enforcement.

## Part 1
## Genetic Information Privacy Act

**30-23-101. Short title — legislative findings and declaration of purpose.** (1) This part may be cited as the "Genetic Information Privacy Act".

(2) The legislature finds and declares that:

(a) (i) the people of Montana regard their privacy as a fundamental right and an essential element of individual freedom; and

(ii) Article II, section 10, of the Montana constitution protects individuals' privacy, and fundamental privacy rights have long been, and continue to be, integral to protecting Montanans;

(b) ongoing advances in technology have produced exponential growth in the volume and variety of personal data being generated, collected, stored, and analyzed, and these advances present both great promise and potential risks;

(c) technology that collects data about the user's bodily and mental functions is transforming the volume and sensitivity of personal data collected from individuals and stored by companies;

(d) neurotechnologies, including devices capable of recording, interpreting, and altering the response of an individual's central or peripheral nervous system to its internal or external environment, raise particularly pressing privacy concerns given their ability to monitor, decode, and manipulate brain activity;

(e) data concerning the activity of the human brain and wider nervous systems, or "neurotechnology data", is extremely sensitive and can reveal intimate information about individuals, including information about health, mental states, emotions, and cognitive functioning;

(f) each human brain is unique, meaning that neural data is specific to the individual from whom it is collected. Because neurotechnology data contains distinctive information about the structure and functioning of individual brains and nervous systems, it contains sensitive information that may link the data to an identified or identifiable individual.

(g) the collection of neurotechnology data involves the involuntary disclosure of information. Even if individuals consent to the collection and processing of their data for narrow use, they are unlikely to be fully aware of the content or quality of information they are sharing.

(h) neurotechnology users cannot decide what specific neurotechnology information they would like to disclose, and they are unlikely to understand the extent to which their neurotechnology data can be decoded, currently or in the future. Neurotechnologies can collect and process information about an individual that the individual did not even know existed.

(i) neurotechnologies that are deployed in medical settings or otherwise utilize the surgical implantation of invasive devices are typically regulated as medical tools that produce health information. Both invasive and noninvasive wearable neurotechnologies used in medical settings are also regulated by health data privacy laws. However, when noninvasive neurotechnologies are used outside of medical settings, they are generally considered consumer products and operate without regulation or data protection standards.

**History: En. Sec. 1, Ch. 768, L. 2023; amd. Sec. 1, Ch. 345, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 1, Ch. 345, L. 2025. Amendment effective October 1, 2025.

**30-23-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Biological sample" means any human material known to contain DNA, including tissue, blood, urine, or saliva.

(2) "Consumer" means an individual who is a resident of this state.

(3) "DNA" means deoxyribonucleic acid.

(4) "Entity" means a partnership, corporation, association, or public or private organization of any character that:

(a) offers consumer genetic testing products or services directly to a consumer; or

(b) collects, uses, or analyzes genetic data.

(5) "Express consent" means a consumer's affirmative response to a clear, meaningful, and prominent notice regarding the collection, use, or disclosure of genetic data for a specific purpose.

(6) (a) "Genetic data" means any data, regardless of format, concerning a consumer's genetic characteristics.

(b) The term includes but is not limited to:

(i) raw sequence data that result from sequencing all or a portion of a consumer's extracted DNA;

(ii) genotypic and phenotypic information obtained from analyzing a consumer's raw sequence data; and

(iii) self-reported health information regarding a consumer's health conditions that the consumer provides to an entity that the entity:

(A) uses for scientific research or product development; and

(B) analyzes in connection with the consumer's raw sequence data.

(7) "Genetic testing" means:

(a) a laboratory test of a consumer's complete DNA, regions of DNA, chromosomes, genes, or gene products to determine the presence of genetic characteristics of a consumer; or

(b) an interpretation of a consumer's genetic data.

(8) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(9) "Neurotechnology" means devices capable of recording, interpreting, or altering the response of an individual's central or peripheral nervous system to its internal or external environment and includes mental augmentation, which means improving human cognition and behavior through direct recording or manipulation of neural activity by neurotechnology.

(10) (a) "Neurotechnology data" means information that is captured by neurotechnologies, is generated by measuring the activity of an individual's central or peripheral nervous systems,

or is data associated with neural activity, which means the activity of neurons or glial cells in the central or peripheral nervous system, and that is not nonneural information.

(b) The term does not include nonneural information, which means information about the downstream physical effects of neural activity, including by not limited to pupil dilation, motor activity, and breathing rate.

(11) "Person" means an individual, partnership, corporation, association, business, business trust, or legal representative of an organization.

(12) "Processor" means a person that processes genetic data on behalf of an entity pursuant to a contract between the entity and the processor that prohibits the processor from retaining, using, or disclosing the genetic data, or any information regarding the identity of the consumer, including whether that consumer has solicited or received genetic testing, as applicable, for any purpose other than for the specific purpose of performing the services specified in the contract.

(13) "Third party" means a person other than the consumer, entity, or processor.

**History: En. Sec. 2, Ch. 768, L. 2023; amd. Sec. 2, Ch. 345, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 2, Ch. 345, L. 2025. Amendment effective October 1, 2025.

**30-23-103. Exceptions.** (1) This part does not apply to:

(a) protected health information that is collected by a covered entity or business associate as those terms are defined in 45 CFR, parts 160 and 164, if separate informed consent related to the collection, use, and dissemination of genetic or neurotechnology data is obtained from the consumer, parent, guardian, or power of attorney, and the covered entity or business associate follows the policies under 30-23-104(6)(a) through (6)(d);

(b) an entity when it is engaged only in collecting, using, or analyzing genetic data or biological samples in the context of scientific or clinical research conducted with the express consent of an individual and in accordance with:

(i) the federal policy for the protection of human research subjects under 45 CFR, part 46, the good clinical practice guideline issued by the international council for harmonisation of technical requirements for pharmaceuticals for human use; or

(ii) the United States food and drug administration policy for the protection of human subjects under 21 CFR, parts 50 and 56;

(c) uses by a governmental agency; or

(d) deidentified genetic data obtained from a third party to the extent that the data is used to conduct internal, medical, or scientific research. Data must be considered deidentified if:

(i) it cannot be reasonably linked to an identifiable individual; and

(ii) the entity:

(A) takes administrative and technical measures to ensure the data cannot be associated with a particular consumer;

(B) maintains and uses data in deidentified form and does not attempt to reidentify data; and

(C) enters a legally enforceable contractual obligation that prohibits a recipient of the data from attempting to reidentify the data.

(2) Any collection, storage, use, or dissemination of genetic or neurotechnology data by a governmental agency must be performed in accordance with a specific state law or executed through a search warrant or investigative subpoena issued pursuant to 46-4-301.

**History: En. Sec. 3, Ch. 768, L. 2023; amd. Sec. 3, Ch. 345, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 3, Ch. 345, L. 2025. Amendment effective October 1, 2025.

**30-23-104. Consumer genetic or neurotechnology data — privacy notice — consent — access — deletion — destruction.** To safeguard the privacy, confidentiality, security, and integrity of a consumer's genetic or neurotechnology data, an entity shall:

(1) provide clear and complete information regarding the entity's policies and procedures for the collection, use, or disclosure of genetic or neurotechnology data by making available to a consumer:

(a) a high-level privacy policy overview that includes basic, essential information about the entity's collection, use, or disclosure of genetic or neurotechnology data; and

(b) a prominent, publicly available privacy notice that includes, at a minimum, information about the entity's data collection, consent, use, access, disclosure, transfer, security, and retention and deletion practices for genetic or neurotechnology data;

(2) obtain initial express consent from a consumer, parent, guardian, or power of attorney for the collection, use, or disclosure of the consumer's genetic or neurotechnology data that:

(a) clearly describes the entity's use of the genetic or neurotechnology data that the entity collects through the entity's genetic testing product or service;

(b) specifies the categories of individuals within the entity that have access to test results; and

(c) specifies how the entity may share the genetic or neurotechnology data;

(3) if the entity engages in any of the following, obtain a consumer's:

(a) separate express consent for:

(i) the transfer or disclosure of the consumer's genetic or neurotechnology data or biological sample to any third party other than the entity's processors, including the name of the third party to which the consumer's genetic or neurotechnology data or biological sample will be transferred or disclosed with the consumer's express consent;

(ii) the use of genetic or neurotechnology data beyond the primary purpose of the entity's genetic testing product or service and inherent contextual uses; or

(iii) the entity's retention of any biological sample provided by the consumer following the entity's completion of the initial testing service requested by the consumer;

(b) informed express consent for transfer or disclosure of the consumer's genetic or neurotechnology data to third party persons for:

(i) research purposes; or

(ii) research conducted under the control of the entity for the purpose of publication or generalizable knowledge; and

(c) express consent for:

(i) marketing to a consumer based on the consumer's genetic or neurotechnology data;

(ii) marketing by a third-party person to a consumer based on the consumer having ordered or purchased a genetic testing product or service. Marketing does not include the provision of customized content or offers on the websites or through the applications or services provided by the entity with the first-party relationship to the consumer; or

(iii) sale or other valuable consideration of the consumer's genetic or neurotechnology data.

(4) comply with the provisions of 44-6-104 requiring a valid legal process for disclosing genetic or neurotechnology data to law enforcement or any other government agency without a consumer's express consent;

(5) develop, implement, and maintain a comprehensive security program to protect a consumer's genetic or neurotechnology data against unauthorized access, use, or disclosure; and

(6) provide a process for a consumer to:

(a) access the consumer's genetic or neurotechnology data;

(b) delete the consumer's genetic or neurotechnology data;

(c) revoke any consent provided by the consumer; and

(d) request and obtain the destruction of the consumer's biological sample.

(7) The requirements of subsections (6)(a) through (6)(d) must be waived if:

(a) the entity obtains express and informed written consent from a consumer, parent, guardian, or power of attorney for participation in a clinical research trial, including the collection and use of any genetic or neurotechnology data, which at a minimum must:

(i) be in accordance with the good clinical practice guideline issued by the international council for harmonisation of technical requirements for pharmaceuticals for human use;

(ii) be obtained no sooner than 14 days from the initial biological sample collection if the biological sample is collected for a primary purpose unrelated to clinical research;

(iii) be obtained separately from any other items of consent;

(iv) be in writing on a form with text that is easily readable with size 12-point font or larger;

(v) include the entity's biological sample and data retention, sharing, and use policies;

(vi) include notice that after consent is given, there is no right to access, inspect, or require the destruction of any genetic or neural biological sample or neurotechnology data; and

(vii) include notice that after consent is given, whole genome sequencing of the individual's biological sample could occur and is permitted without further notice to the individual;

(b) the genetic or neural biological sample and data is utilized for clinical research purposes only.

(8) The requirements of subsection (6)(d) must be temporarily waived if:

(a) a laboratory is governed under 42 CFR 493.1105;

(b) the laboratory retains the biological sample for no more than 2 years or the shortest time allowed under law, whichever is less;

(c) the laboratory does not share, test, or conduct additional analysis or research on the biological sample while the sample is being held under the retention requirements set forth in 42 CFR 493.1105 prior to the requested destruction of the sample; and

(d) when a clinical laboratory is certified by the centers for medicare and medicaid services, when the retention of a patient's biological sample does not exceed the time needed for compliance with any quality standard or regulation issued pursuant to section 263(a) of the Public Health Service Act, 42 U.S.C. 263(a).

(9) The requirements of subsection (7) supersede all exceptions to, and waivers of, informed consent in the federal policy for the protection of human subjects under 45 CFR, part 46.

(10) Genetic or neurotechnology data and biometric samples of Montana residents collected in the state may not be stored within the territorial boundaries of any country currently sanctioned in any way by the United States office of foreign asset control or designated as a foreign adversary under 15 CFR 7.4(a). Genetic or neurotechnology data or biometric data of Montana residents collected in the state may only be transferred or stored outside the United States with the consent of the resident.

**History: En. Sec. 4, Ch. 768, L. 2023; amd. Sec. 4, Ch. 345, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 4, Ch. 345, L. 2025. Amendment effective October 1, 2025.

**30-23-105. Disclosure — when prohibited — when express consent required.** (1) The disclosure of genetic or neurotechnology data pursuant to this part must comply with all state and federal laws for the protection of privacy and security.

(2) Notwithstanding any other provisions in 30-23-104, an entity may not disclose a consumer's genetic or neurotechnology data to any entity offering health insurance, life insurance, or long-term care insurance, or to any employer of the consumer without the consumer's express consent.

**History: En. Sec. 5, Ch. 768, L. 2023; amd. Sec. 5, Ch. 345, L. 2025.**

**Compiler's Comments**

*2025 Amendment:* See 2025 Session Law for amendment made by sec. 5, Ch. 345, L. 2025. Amendment effective October 1, 2025.

**30-23-106. Enforcement.** (1) The attorney general has the sole authority to enforce this part.

(2) The attorney general may initiate a civil enforcement action against a person for violation of this part.

(3) In an action to enforce this part, the attorney general may recover:

(a) actual damages to the consumer;

(b) costs;

(c) reasonable attorney fees; and

(d) $2,500 for each violation of 30-23-104.

**History: En. Sec. 6, Ch. 768, L. 2023.**

# CHAPTER 24
# DIGITAL ASSETS

### Part 1 — Financial Freedom and Innovation Act

30-24-101. Short title.
30-24-102. Definitions.
30-24-103. Prohibitions on use and testing of central bank digital currency.
30-24-104. Permitted uses of digital assets.
30-24-105. Access to blockchain protocols and transfer of digital assets.
30-24-106. Securities exemptions.
30-24-107. Certification required for listing of network tokens.
30-24-108. Transition from foreign entity to Montana entity for network token issuers.
30-24-109. Sales limit on network tokens.

**Chapter Compiler's Comments**

*Montana Blockchain and Digital Innovation Task Force:* Section 1, Ch. 386, L. 2025, provided for the Montana blockchain and digital innovation task force. Effective May 5, 2025, and terminates December 31, 2026.

## Part 1
## Financial Freedom and Innovation Act

**Part Compiler's Comments**

*Effective Date:* This part is effective October 1, 2025.

**30-24-101. Short title.** This part may be cited as the "Financial Freedom and Innovation Act".

**History: En. Sec. 1, Ch. 379, L. 2025.**

**30-24-102. Definitions.** As used in this part, the following definitions apply:

(1) "Affiliate persons" means a person who owns more than 10% of a digital asset or network token from the current available supply.

(2) "Blockchain" means data that is:

(a) shared across a peer-to-peer network to create a ledger of verified transactions or information among network participants linked together using cryptography to maintain the integrity of the ledger and to execute other functions; and

(b) distributed among network participants in an automated fashion to concurrently update network participants on the state of the ledger and any other functions.

(3) "Blockchain protocol" means any executable software deployed to a blockchain, typically referred to as smart contracts, including an additional standardized set of rules that uses a previously existing blockchain as a base, which facilitates the transfer of data and electronic records and allows that data to be broadcast to nodes. The executable software is governed by a set of predefined rules that execute autonomously without human intervention. The rules may be altered by a predetermined mechanism.

(4) (a) "Central bank digital currency" means a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States federal reserve system or a federal agency that is made directly available to institutions or consumers by the entities, or which is processed or validated directly by the entities.

(b) The term does not include a digital asset backed by legal tender or government treasuries and issued by a private entity.

(5) "Commissioner" means the securities commissioner of the state.

(6) "Decentralized network" means, with respect to a blockchain protocol to which a network token relates, a network:

(a) where no person:

(i) has the unilateral authority, directly or indirectly, through a contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality or operation of the network; or

(ii) has the unilateral authority to restrict or prohibit a person who is not a digital asset issuer, related person, or an affiliated person from:

(A) using, earning, or transmitting a digital asset;

(B) deploying software that uses or integrates with the network;

(C) participating in a decentralized governance system with respect to the network; or

(D) operating a node, validator, or other form of computational infrastructure with respect to the network; and

(b) where no network token issuer or affiliated person beneficially owned, in the aggregate, 20% or more of the total amount of units of the network token that:

(i) may be created, issued, or distributed in the network; or

(ii) were freely transferable or otherwise used or available to be used for the purposes of the network.

(7) (a) "Digital asset exchange" means a trading platform that offers or seeks to offer a market in at least three digital assets.

(b) The term does not include a company organized under the laws of this state that sells network tokens exclusively.

(8) "Digital assets" has the same meaning as provided in 70-1-108.

(9) "Functional network" means, with respect to a blockchain protocol to which a network token relates, a network that allows network participants to use a network token for:

(a) the transmission and storage of value on the network;

(b) the participation in services provided by an application running on the network; or

(c) the participation in the decentralized governance system of the network.

(10) "Governing authority" means a board, commission, department, or other agency of the state or a political subdivision in the state.

(11) "Hardware wallet" means a physical device that is not continuously connected to the internet and allows an individual to secure and transfer digital assets. The term also includes a physical device under which the owner of digital assets retains independent control over the digital assets.

(12) (a) "Network token" means a digital asset as defined in 70-1-108 that is used for facilitating, coordinating, or enabling access to decentralized computing resources, consumer internet services, or internet infrastructure services via blockchain, including permanent or temporal data storage, computation, wireless access, data capture, audio or visual media hosting, audio or visual media streaming, and network bandwidth.

(b) In order to qualify as a network token, the token must:

(i) in the case of a token that is not speculative in nature, relate to a network that is a functional network; or

(ii) in the case of a token that is speculative in nature, relate to a network that is both a functional network and a decentralized network.

(c) The purchase or sale of a network token from a digital asset exchange or from a network token issuer directly does not affect its status as a network token.

(d) The term does not include:

(i) any digital assets that constitute a note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest based on the value of these particular digital assets; or

(ii) any digital asset that, based on its terms and other characteristics, is, represents, or is functionally equivalent to an agreement, contract, or transaction that is:

(A) a contract of sale of a commodity as defined in section 1a of the Commodity Exchange Act for future delivery or an option on a contract of sale of a commodity;

(B) a securities futures product;

(C) a swap;

(D) an agreement, contract, or transaction described in section (2)(c)(2)(C)(i) or 2(c)(2)(D)(i) of the Commodity Exchange Act;

(E) a commodity option authorized under section 4c of the Commodity Exchange Act; or

(F) a leverage transaction authorized under section 19 of the Commodity Exchange Act.

(13) "Network token issuer" means an individual or corporation that produced the source code that runs and distributes a network token or creates a network token that is distributed to the public for use.

(14) "Node" means software run on a computer that does not exercise discretion over transactions initiated by the end user of the blockchain protocol and does any of the following:

(a) communicates with other devices or participants on a blockchain to maintain consensus and integrity of that blockchain;

(b) creates and validates blocks of transactions; or

(c) contains and updates a copy of a blockchain.

(15) "Self-hosted wallet" means a digital interface that is used to do both of the following:

(a) secure and transfer digital assets; and

(b) retain independent control over the secured digital assets by the owner of the digital assets.

(16) "Smart contracts" means computer programs that are hosted and executed on a blockchain network. Each smart contract consists of code specifying predetermined conditions that, when met, trigger outcomes.

(17) "Staking" means committing digital assets to a blockchain network to participate in the blockchain network's operations by validating transactions, proposing and attesting to blocks, and securing the network.

(18) "Staking as a service" means the provision of technical staking services, including but not limited to the operation of nodes and the associated infrastructure necessary to facilitate participation in blockchain networks' consensus mechanisms by the service provider on behalf of an individual or entity that owns the digital assets being staked.

**History:** **En. Sec. 9, Ch. 379, L. 2025.**

**30-24-103. Prohibitions on use and testing of central bank digital currency.** (1) A governing authority may not accept or require a payment using central bank digital currency.

(2) A governing authority may not participate in a test of central bank digital currency by the board of governors of the federal reserve system or a branch or agency of the federal government.

**History:** **En. Sec. 2, Ch. 379, L. 2025.**

**30-24-104. Permitted uses of digital assets.** A governing authority may not prohibit, restrict, or otherwise impair the ability of an individual or business to:

(1) accept digital assets as a method of payment for legal goods and services; or

(2) take custody of digital assets using a self-hosted wallet or hardware wallet.

**History:** **En. Sec. 3, Ch. 379, L. 2025.**

**30-24-105. Access to blockchain protocols and transfer of digital assets.** A business or individual in the state may:

(1) operate a node for the purpose of connecting to a blockchain protocol and participating in the blockchain protocol's operations;

(2) develop software on a blockchain protocol;

(3) transfer digital assets to another business or individual utilizing a blockchain protocol; and

(4) participate in staking on a blockchain protocol.

**History:** **En. Sec. 4, Ch. 379, L. 2025.**

**30-24-106. Securities exemptions.** (1) A business offering to provide staking as a service for individuals or to other businesses may not be considered as offering a security or investment contract pursuant to state securities laws.

(2) Nothing in this part may preclude the commissioner from instituting appropriate proceedings against a business or individual that falsely claims to be offering staking as a service.

**History:** **En. Sec. 5, Ch. 379, L. 2025.**

**Cross-References**

Exempt transactions — rulemaking, 30-10-105.

**30-24-107. Certification required for listing of network tokens.** (1) In order to be eligible for exemption under 30-10-105, a network token issuer seeking to offer or sell a network token in a transaction that is subject to the laws of this state shall provide the commissioner with the following:

(a) the name, legal status, and website of the network token issuer, including the jurisdiction in which the network token issuer is organized and the date of organization;

(b) the address and telephone number of the network token issuer or a legal representative of the network token issuer;

(c) an overview of the material aspects of the network to which the network token relates, including how the network token will function to provide access to services;

(d) a description of the plan of distribution of any unit of a network token that is to be offered;

(e) the consensus mechanism of the token, if one exists;

(f) the governance structure of the network token, if one exists;

(g) a network token's current or proposed functionality;

(h) a description of the material risks surrounding ownership of a unit of a network token;

(i) a description of the material aspects of the network token issuer's business;

(j) a description of material transactions or relationships between the network token issuer and affiliated persons;

(k) the date the network token began functioning; and

(l) other information the commissioner considers relevant to the exemption request.

(2) A network token issuer shall apply for and obtain the written approval of the commissioner prior to making an offer or a sale. The issuer shall pay a filing fee that must accompany the application. The commissioner may approve or deny the application.

(3) The network token issuer shall provide updates on all information provided under subsection (1) to the commissioner every 6 months, or within 30 days if the information becomes inaccurate in a material respect.

**History:** **En. Sec. 6, Ch. 379, L. 2025.**

**30-24-108. Transition from foreign entity to Montana entity for network token issuers.** A foreign corporation that has previously issued network tokens may be granted an exemption under 30-10-105 if, prior to the offer or sale of tokens, the foreign corporation completes the following:

(1) registers with the secretary of state as provided in 35-2-820 through 35-2-830;

(2) meets all obligations under 30-24-107;

(3) provides the commissioner with all relevant governing documents related to incorporation in the foreign corporation's country;

(4) provides proof that the foreign corporation is not under investigation for securities fraud or has not been convicted of securities fraud in any other jurisdiction; and

(5) provides other information the commissioner considers relevant to the exemption request.

**History:** **En. Sec. 7, Ch. 379, L. 2025.**

**30-24-109. Sales limit on network tokens.** (1) In order for a network token issuer to receive an exemption under 30-10-105, the aggregate of network tokens that may be sold by a network token issuer to accredited or nonaccredited investors in a 12-month period may not exceed $250 million as the amount is adjusted annually by the securities and exchange commission to reflect the change in the consumer price index for all urban consumers published by the bureau of labor statistics of the U.S. department of labor. This does not include programmatic and nondiscretionary distributions of network tokens to persons for services or direct use of the network made in accordance with the rules and code of the network.

(2) The commissioner may revise the limitations in subsection (1) by rule when necessary or in the public interest and when consistent with the protection of investors.

**History:** **En. Sec. 8, Ch. 379, L. 2025.**

# CHAPTER 25
# TECHNOLOGY AND DATA MANAGEMENT

**Part 1 reserved**

**Part 2 — Prohibited Uses of Technology**

30-25-201. Definitions.
30-25-202. Prohibition on access to child sexual abuse material.
30-25-203. Enforcement — right of victim to bring action — private right of action — statute of limitations.
30-25-204. Remedies available — apportionment of damages.

**Part 3 — Child Digital Protection Act**

30-25-301. Short title.
30-25-302. Legislative findings and purpose.
30-25-303. Definitions.
30-25-304. Trust contribution for profitable video content involving minor child.
30-25-305. Right to be forgotten — requests to remove content involving minor child after reaching age of majority.
30-25-306. Private right of action — remedies.
30-25-307. Duty to maintain and provide information — injunctive relief.

## Part 1 reserved

## Part 2
## Prohibited Uses of Technology

**Part Compiler's Comments**

*Effective Date:* Section 7, Ch. 525, L. 2025, provided that this part is effective October 1, 2025.

**30-25-201. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Child sexual abuse material" means child pornography as defined in 18 U.S.C. 2256.

(2) (a) "Content provider" means any person or entity that is responsible, in whole or in part, for the active creation, production, publication, distribution, or storage of content provided through the internet or any other interactive computer service. The term includes but is not limited to a website and social media platform as defined in 42 U.S.C. 1862w(a)(2).

(b) The term does not include a portion of business activity that solely provides:

(i) hosting services to third parties, which includes server hosting, database hosting, application hosting, e-mail hosting, container hosting, data warehouse hosting, or cloud computing providers;

(ii) a general use browser that retrieves and displays information from an interactive computer service without regard for the substance of the information;

(iii) an internet services provider as defined in 2-17-602;

(iv) ownership, maintenance, or operation of physical internet infrastructure, which includes but is not limited to fiber optic lines, routers, satellites, and cell towers; or

(v) a search engine.

(3) "Department" means the department of justice provided for in 2-15-2001.

(4) "Hyperlink" means the representation using numbers, letters, and symbols of an internet address in a form that an internet browser application can recognize as an internet address.

(5) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(6) "Private person" means any person other than an officer or employee of a state or local government entity in this state.

(7) "Reasonably accessible" means that a person may obtain access by utilizing reasonably available retail technology services, regardless of the general policies or practices of the content provider or interactive computer service.

(8) "Search engine" means technology and systems that use algorithms to sift through and index as third-party websites and content on the internet in response to search queries entered by a user.

(9) "Sexually explicit" means involving actual or simulated:

(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

(e) lascivious exhibition of the anus, genitals, or pubic area of any person.

(10) "Substantial amount" means an amount equal to or greater than 30% of the total visual content created, produced, published, distributed, maintained, or otherwise managed by the content provider.

(11) "Victim" means a person who is depicted in child sexual abuse material and, at the time the person is depicted in the child sexual abuse material, is a minor.

**History:** **En. Sec. 1, Ch. 525, L. 2025.**

**30-25-202. Prohibition on access to child sexual abuse material.** (1) A content provider who produces, publishes, distributes, or maintains a substantial amount of sexually explicit visual content in a manner in which the visual content is reasonably accessible in Montana may not produce, publish, distribute, or maintain child sexual abuse material in a manner in which the material is reasonably accessible in Montana.

(2) A content provider may not collect revenue or make a profit from distributing child sexual abuse material to a person physically located in Montana, regardless of whether the material is produced or created by a third party or regardless of how the revenue is generated.

(3) A content provider who generates 50% or more of the content provider's income from the production, publication, or distribution of sexually explicit visual content and who has generated at least $500,000 in income may not produce, publish, distribute, or maintain child sexual abuse material in a manner in which the material is reasonably accessible in Montana.

(4) In an action filed under 30-25-203 alleging a violation of this section, it is a defense that a content provider removes visual content that contains child sexual abuse material within 96 hours of the visual content being made reasonably accessible in Montana.

(5) In an action filed under 30-25-203 alleging a violation of this section, it is a defense that the person maintaining an action to seek remedies available under 30-25-204 caused the alleged violation of this section to occur by uploading or otherwise causing the child sexual abuse material to be produced, published, distributed, or maintained by the content provider.

(6) It is not a violation of this section to produce, publish, distribute, or maintain a hyperlink to a third-party website if the hyperlink does not appear with visual content, regardless of whether the third-party website contains child sexual abuse material.

(7) (a) Nothing in this part may be construed to place liability on a content provider for reporting child sexual abuse material to law enforcement.

(b) Reports of child sexual abuse material made to law enforcement by a content provider may not be admitted as evidence in or otherwise used to form the factual basis of an action brought under 30-25-203.

**History:** **En. Sec. 2, Ch. 525, L. 2025.**

**30-25-203. Enforcement — right of victim to bring action — private right of action — statute of limitations.** (1) A victim, or the parent or guardian of a victim if the victim is currently under 18 years of age, depicted in child sexual abuse material that is accessed in violation of 30-25-202 may maintain an action to seek the remedies available under 30-25-204 as well as restitution for a violation of 30-25-202.

(2) For any violation of 30-25-202 not prosecuted by the victim under the authority in subsection (1), a private person may maintain an action to seek the remedies under 30-25-204. The private person shall serve a copy of the complaint on a victim who is harmed by the violation alleged in the complaint if the identity of the victim can be reasonably ascertained.

(3) An action under subsection (1) must be brought within 15 years of the violation.

(4) An action under subsection (2) must be brought within 10 years of the violation.

(5) (a) A victim's failure to bring an action under subsection (1) or intervene in an action under subsection (2) does not preclude a victim's ability to bring a tort action for an injury caused by a violation of 30-25-202, but damages awarded in a tort action for the violation must be reduced by the amount of damages paid to a victim under 30-25-204.

(b) An action brought under subsection (2) does not preclude a subsequent claim brought by a victim under subsection (1) for restitution, compensatory damages, or 50% of the combined punitive and statutory damages if:

(i) the victim does not intervene in the action brought under subsection (2); and

(ii) no relief is awarded to the victim under 30-25-204 in the action brought under subsection (2).

(6) A person who meets an exception to the definition of content provider under 30-25-201(2)(b) and also engages in activity covered under the same definition may be found to be in violation of this section only to the extent that the person engages in an activity prohibited under this section as a content provider.

(7) For the purposes of this section, each single piece of visual content containing child sexual abuse material constitutes a violation, regardless of whether the visual content is a copy or duplicate.

**History:** **En. Sec. 3, Ch. 525, L. 2025.**

**30-25-204. Remedies available — apportionment of damages.** (1) A plaintiff who brings an action under 30-25-203 may seek any of the following:

(a) injunctive relief;

(b) declaratory relief;

(c) compensatory damages;

(d) punitive damages;

(e) statutory damages, which are the following amounts:

(i) $100,000 for a strict violation of 30-25-202;

(ii) $1,000,000 for a violation of 30-25-202 that is committed negligently or recklessly; or

(iii) $5,000,000 for a violation of 30-25-202 that is committed purposely or knowingly; and

(f) reasonable attorney fees and costs incurred in bringing the action.

(2) In addition to the remedies provided in subsection (1), a victim may seek restitution.

(3) For each unique violation under 30-25-202, a plaintiff's recovery of statutory damages is limited to one subsection under subsections (1)(e)(i) through (1)(e)(iii).

(4) In an action in which the remedies under subsection (1) are ordered:

(a) compensatory damages for each violation must be paid to the victim; and

(b) the amount of punitive and statutory damages must be apportioned for each violation as follows:

(i) in an action brought by a private plaintiff in which a victim is reasonably identified by the court, regardless of the victim's involvement as a plaintiff:

(A) 50% to a victim, or equally divided among multiple victims;

(B) 35% to a private plaintiff; and

(C) 15% to the department to be deposited into a state special revenue account to the credit of the department;

(ii) in an action brought by a victim in which there is not a nonvictim plaintiff:

(A) 80% to a victim, or equally divided among multiple victims; and

(B) 20% to the department to be deposited into a state special revenue account to the credit of the department; or

(iii) in an action brought by a private plaintiff in which no victim is reasonably identified by the court:

(A) 60% to a private plaintiff; and

(B) 40% to the department to be deposited into a state special revenue account to the credit of the department.

(5) If damages are awarded in an action described in subsection (4)(b)(iii), the combined amount of punitive and statutory damages must be reduced by 50% and the remaining amount must be apportioned as described in subsection (4)(b)(iii).

**History:** **En. Sec. 4, Ch. 525, L. 2025.**

## Part 3
## Child Digital Protection Act

**Part Compiler's Comments**

*Effective Date:* This part is effective October 1, 2025.

**30-25-301. Short title.** This part may be cited as the "Child Digital Protection Act".

**History: En. Sec. 1, Ch. 650, L. 2025.**

**30-25-302. Legislative findings and purpose.** (1) The legislature finds that social media influencers can make significant amounts of money from digital content. Some influencers use the influencers' minor children as subjects of the content. The children featured in family-produced video content generate interest in and revenue for the content but receive no financial compensation for participation. Unlike in child acting, the children are not playing a part and lack legal protections in the state.

(2) The legislature further finds that social media influencers who market video content of the influencers' families, or "content creators", can profit from the personal property rights of the influencers' children without restriction. Some children are filmed from birth, with highly personal details of the children's lives shared on the internet for compensation. In addition to severe loss of privacy, the children receive no consideration for the use and exchange of the children's personal property rights.

(3) The purpose of this part is to allow minors to receive proportional compensation for the use of specified personal property rights in which the minor's parent or parents have reached a specified profit threshold from the use. Further, the purpose of this part is to provide for minors to exercise control over specified personal property rights on reaching the age of majority.

**History: En. Sec. 2, Ch. 650, L. 2025.**

**30-25-303. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Age of majority" means 18 years of age.

(2) "Content creation" means content shared on an online platform that generates compensation.

(3) "Content creator" means a person or persons 18 years of age or older, including family members, who create content performed in the state that generates compensation and includes any proprietorship, partnership, company, or other corporate entity assuming the name or identity of a particular individual or individuals or family members for the purposes of that content creator.

(4) "Likeness" means an image, painting, sketch, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or part of the individual's face or body, or the distinctive appearance, gestures, or mannerisms of an individual.

(5) "Minor" means a person under 18 years of age whose principal place of residence is in the state.

(6) "Name" means the actual or assumed name or nickname of a living or deceased individual that is intended to identify that individual.

(7) "Online platform" means a public-facing website, web application, or digital application, including a mobile application. The term includes a social network, advertising network, mobile operating system, search engine, e-mail service, monetization platform to sell digital services, streaming service, and paid subscription.

(8) "Photograph" means a photograph or photographic reproduction, still or moving, or a videotape or online or live television transmission of an individual, so that the individual is readily identifiable.

(9) "Video segment" means a self-contained moving visual image that is recorded in an electronic medium.

**History: En. Sec. 3, Ch. 650, L. 2025.**

**30-25-304. Trust contribution for profitable video content involving minor child.** (1) A content creator meeting the criteria under subsection (2) shall compensate, under subsection (3), the content creator's minor child whose likeness, name, or photograph constitutes the video content meeting the criteria in subsection (2)(a).

(2) This section applies to a content creator meeting the following criteria at any time within the previous 12-month period:

(a) (i) the number of views received for each video segment on an online platform or network meets the platform or network's threshold for generation of compensation; or

(ii) the content creator receives actual compensation for the video content equal to or greater than $0.10 a view; and

(b) at least 30% of the content creator's compensated video content produced within a 30-day period includes the likeness, name, or photograph of the content creator's minor child.

(3) A content creator meeting the criteria in subsection (2) shall set aside a percentage, calculated under subsection (4), of the gross earnings on the video content including the likeness, name, or photograph of the content creator's minor child in a trust to be preserved for the benefit of the minor on reaching the age of majority according to the following distribution:

(a) if only one minor child meets the content threshold described in subsection (2)(b), the percentage required under subsection (4) of total gross earnings on a video segment including the likeness, name, or photograph of the content creator's minor child that is equal to or greater than the content percentage that includes the minor child as described in subsection (2)(b); or

(b) if more than one minor child meets the content threshold described in subsection (2)(b) and a video segment includes more than one of those children, the additive percentage required under subsection (4) for all minor children in a video segment must be equally divided between the children, regardless of differences in percentage of content featuring the individual children.

(4) (a) For video segments that include the likeness, name, or photograph of the minor that is equal to or greater than 30% but less than 50% of the compensated video content, the trust contribution under subsection (3) must be equal to 10% of the gross earnings.

(b) For video segments that include the likeness, name, or photograph of the minor that is equal to or greater than 50% but less than 75% of the compensated video content, the trust contribution under subsection (3) must be equal to 25% of the gross earnings.

(c) For video segments that include the likeness, name, or photograph of a minor that is equal to or greater than 75% of the compensated video content, the trust contribution under subsection (3) must be equal to 50% of the gross earnings.

(5) Content percentage is measured by the percentage of time the likeness, name, or photograph of the content creator's minor child visually appears or is the subject of an oral narrative in a video segment, as compared to the total length of the video segment.

**History: En. Sec. 4, Ch. 650, L. 2025.**

**30-25-305. Right to be forgotten — requests to remove content involving minor child after reaching age of majority.** (1) On reaching the age of majority, an individual previously covered under 30-25-304 may request the permanent deletion of a video segment that includes the likeness, name, or photograph of the individual from an online platform or network that provided compensation to the individual's parent or parents in exchange for the video content.

(2) An online platform or network shall take all reasonable steps to permanently delete the video segment for which a request under subsection (1) is made.

(3) A contract with an online platform or network for the exchange or use of video content that would reasonably be anticipated to include greater than a nominal use of a content creator's minor child must include notification to the online platform or network of the minor child's future rights as provided in this section.

**History: En. Sec. 5, Ch. 650, L. 2025.**

**30-25-306. Private right of action — remedies.** (1) An individual harmed by a violation of 30-25-304 and 30-25-305 may maintain a cause of action for the following remedies:

(a) injunctive relief;

(b) damages in an amount that is the greater of:

(i) $1,500; or

(ii) actual damages sustained to the individual as a result of the violation; and

(c) recovery for any profits that are attributable to the violation not included in the calculation of actual damages under subsection (1)(b).

(2) To prove profits under this section, an individual shall submit proof of gross revenues attributable to the violation and the violating party shall prove the party's deductible expenses.

(3) An individual shall bring a cause of action under this section within 7 years of the discovery of the violation or before the individual reaches 26 years of age, whichever is later.

**History: En. Sec. 6, Ch. 650, L. 2025.**

**Compiler's Comments**

*2025 Code Commissioner Correction:* In (1)(c) the Code Commissioner substituted "subsection (1)(b)" for "subsection (2)(b)" to correct an erroneous reference.

**30-25-307. Duty to maintain and provide information — injunctive relief.** (1) A content creator whose content meets the criteria under 30-25-304(2) shall maintain the following records annually and shall provide the records to the minor on request:

(a) the name and documentary proof of the age of the minor engaged in the work of content creation;

(b) the number of video segments that generated compensation as described in 30-25-304(2);

(c) the total number of minutes of the video segments for which the content creator received compensation;

(d) the total number of minutes each minor was featured in video segments;

(e) the total compensation generated from video segments featuring the minor; and

(f) the amount deposited in the trust fund established under the requirements of 30-25-304(3) for the benefit of the minor.

(2) The records provided for in subsection (1) must be retained and maintained by a content creator until the minor reaches the age of majority, at which time the content creator shall provide the records to the individual previously covered by 30-25-304.

(3) If a content creator whose video segment meets the criteria under 30-25-304(2) fails to maintain the records as provided in subsection (1), the minor may maintain a civil action under 30-25-306.

**History: En. Sec. 7, Ch. 650, L. 2025.**

(2) To prove profits under this section, an individual shall submit proof of gross revenues attributable to the violation and the violating party shall prove the party's deductible expenses.

(3) An individual shall bring a cause of action under this section within 7 years of the discovery of the violation or before the individual reaches 26 years of age, whichever is later.

**History:** En. Sec. 6, Ch. 650, L. 2025.

Compiler's Comments

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(d) the total number of minutes each minor was featured in video segments;

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(3) If a content creator whose video segment meets the criteria under 30-25-304(2) fails to maintain the records as provided in subsection (1), the minor may maintain a civil action under 30-25-306.

**History:** En. Sec. 7, Ch. 650, L. 2025.